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IN THE SUPREME COURT OF THE STATE OF IDAHO

THE STATE OF IDAHO,  
Plaintiff-Respondent,  
vs  
THOMAS EUGENE CREECH,  
Defendant-Appellant.

) Supreme Court No. \_\_\_\_\_  
)  
)  
) COURT REPORTER'S TRANSCRIPT  
)  
)  
)  
)

BEFORE  
HONORABLE J. RAY DURTSCHI  
DISTRICT JUDGE

APPEAL from the District Court of the First  
Judicial District of the State of Idaho, in and for the  
County of Shoshone.

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A P P E A R A N C E S

WAYNE KIDWELL, Esq. Attorney General of the State of Idaho, Capitol Building, Boise, Idaho, for and on behalf of the plaintiff-respondent.

BRUCE O. ROBINSON, Esq., Post Office Box 8, Nampa, Idaho, appearing for and on behalf of the defendant-appellant.



IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF SHOSHONE

THE STATE OF IDAHO,

Plaintiff,

V.5

THOMAS EUGENE CREECH,

Defendant.

Cr. No. 2165

REPORTER'S TRANSCRIPT

BEFORE

HONORABLE J. RAY DURTSCHI

DISTRICT JUDGE

BE IT REMEMBERED, That the above-entitled matter came on for hearing and trial before the Honorable J. Ray Durtschi, District Judge, with a jury, at Cascade, Idaho, May 20, 1975 through May 22, 1975, and at Wallace, Idaho, October 6, 1975 through October 22, 1975.

A P P E A R A N C E S

ROBERT REMAKLUS, Esq., Prosecuting Attorney, Cascade, Idaho, and  
LYNN THOMAS, Esq., Deputy Attorney General, Statehouse, Boise,  
Idaho, appearing for and on behalf of the plaintiff.

BRUCE O. ROBINSON, Esq., Post Office Box 8, Nampa, Idaho,  
appearing for and on behalf of the defendant, and

WARD HOWER, Esq., Post Office Box 799, Cascade, Idaho,  
appearing for and on behalf of the defendant.

1 IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
2 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF SHOSHONE  
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5 THE STATE OF IDAHO, ) Cr. No. 2165  
6 )  
7 Plaintiff-Respondent, )  
8 )  
9 vs ) LODGMENT OF COURT  
10 ) REPORTER'S TRANSCRIPT  
11 ) ON APPEAL  
12 )  
13 THOMAS EUGENE CREECH, )  
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15 Defendant-Appellant. )  
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RECEIVED from John W. Gambee, Official Court Reporter  
of the above-entitled court, and lodged with me this \_\_\_\_ day  
of \_\_\_\_\_, 1976, original plus \_\_\_\_\_ copies of  
the Court Reporter's Transcript on Appeal.

CLERK OF THE DISTRICT COURT

\_\_\_\_\_  
Deputy

1 WALLACE, IDAHO, FRIDAY, OCTOBER 3, 1975, 1:30 P.M.

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3  
4 MR. REMAKLUS: Could you read us back the last couple  
5 of questions, please.

6 (Prior questions and answers read by the  
7 Court Reporter.)

8 MR. REMAKLUS: May I approach the bench and get the  
9 Exhibit, please.

10 THE COURT: Yes.

11 MR. REMAKLUS: I would offer State's No. 2.

12 MR. ROBINSON: No objection, Your Honor.

13 THE COURT: Two will be admitted.

14 (State's Exhibit No. 2 admitted into evidence.)  
15

16 DIRECT EXAMINATION (Continued)

17 BY MR. REMAKLUS:

18 Q Mr. Freeman, I think reference to points of time  
19 we were to the point where you had transported Miss Spaulding  
20 and the defendant to Mountain Home; is this correct?

21 A Yes, sir.

22 Q And would you take up your narrative at that point.  
23 What did you do upon arrival at the Sheriff's office at  
24 Mountain Home, Idaho?

25 A We entered the Sheriff's entrance of the

1 courthouse; which is to the south side of the building, the  
2 Sheriff's Department at that time being in the basement.

3 We entered, retrieved the keys to the Commissioners'  
4 room; which is on the first floor of the courthouse, and took  
5 the subject in for interview.

6 Q And were there any searches made at this point?

7 A Not at this particular point, no, sir.

8 Q Now, at this point were you still having an  
9 opportunity to observe the defendant?

10 A Yes, sir.

11 Q And could you describe his acts and conduct at  
12 that time?

13 A Yes, sir. His conduct, I thought, was quite  
14 normal under the circumstances. Mr. Creech's eyes appeared to  
15 me to be lightly bloodshot, I didn't notice any unusual  
16 dilation of the eyes. We had then been in the building for  
17 a matter of a few minutes, they had responded to the light  
18 that was in the building; the light in that room being real  
19 similar to the lighting in here as far as the lightness, and  
20 the eyes appeared to me to be normal, you know, under that  
21 type of lighting.

22 Q Would you describe what you mean?

23 A Well, the darker the room, naturally, the more  
24 dilation of the eyes that you get where, if you are sitting  
25 under lights of this type, you get more of a normal-type size

1 of the pupil rather than the pupil being real large or  
2 extremely pinpointed.

3 Q At that time you say the pupils appeared to have  
4 responded and been normal; is that correct?

5 A Yes, sir.

6 Q Please continue to describe what -- did you have a  
7 chance then to observe his speech?

8 A Yes, sir, I talked with him.

9 Q And would you describe his manner of speech?

10 A His speech was quite normal, possibly a little  
11 faster than Mr. Creech was speaking this morning, but not  
12 much so. There was no slurring of the words, there appeared  
13 to be no drowsiness about Mr. Creech at the time.

14 Q And what time of day was this, now, Mr. Freeman?

15 A This would have been sometime after 4:30 in the  
16 morning; I would say closer to 6:00 or even, you know, right  
17 around that time.

18 Q And then did you -- what, if anything, did you  
19 have to do with Mr. Creech personally after that?

20 A Well, during the course of the conversation  
21 Mr. Creech had brought up that he had previously used heroin.  
22 This aroused my interest, we had to check Mr. Creech over in  
23 order to fill out our normal booking cards that we maintain  
24 there consisting of a list of all scars, marks and tattoos.

25 During the course of this Mr. Creech was given

1        what we refer to as a "felony search" which is a complete  
2        total strip search. Then his clothes were kept in my  
3        possession and he was given a pair of County coveralls to put  
4        on; that way we know what the individual has with him at that  
5        time and what they don't.

6                Q.     And with reference to his remarks about heroin,  
7        did you make any particular search of his person?

8                A.     Yes, sir.

9                Q.     What did that consist of?

10              A.     Well, that was a check of his body cavities--were  
11        also visually checked during this felony search and to the  
12        best of my recollection there was track marks on Mr. Creech's  
13        arms.

14              Q.     Would you tell us what you mean by that?

15              A.     Track marks is normally dark marks left by needles  
16        from syringes and, in a lot of cases, these needles are not  
17        necessarily sterile, so you do get a tracking, or mark from  
18        these and sometimes abscesses, infections.

19              Q.     And did you find any abscesses or infections?

20              A.     To the best of my recollection there was one or  
21        two small ones but I can't say for sure because these tracks  
22        don't really stand out that much in my mind right now.

23              Q.     Did you find anything that you thought would be  
24        a fresh track mark?

25              A.     No, sir, nothing that I would consider real fresh.

1 Of course, a lot of times a fresh one won't necessarily show  
2 up as much as an older one will.

3 Q And, then, did you have anything further to do  
4 with the defendant at that time?

5 Let me ask you this, Mr. Freeman: This felony  
6 search, do you refer to that as a "strip search"?

7 A Yes, sir.

8 Q And when that was conducted, did Mr. Creech  
9 remove his own clothing?

10 A I believe he did.

11 Q Did you observe that?

12 A Yes, sir.

13 Q And could you describe his actions?

14 A He pulled off his clothes just like I would pull  
15 mine off and I hope you would pull yours off the same way.

16 Q You didn't notice anything unusual?

17 A No, sir.

18 Q Thank you. What else, then, if anything,  
19 occurred?

20 A Once he was placed in the coveralls, shortly  
21 afterwards, Patrolman Bill Hill escorted Mr. Creech over to  
22 the City Police Department where he had some smaller  
23 individual-type cells so Mr. Creech could be placed in there.  
24 Then when Bill come back he brought the City Matron over for  
25 a search of the female suspect.



1 Q And did you see Mr. Creech again that day?

2 A No, sir -- I beg your pardon, when there were --  
3 the officers were getting ready to leave to go to Valley County  
4 I did see him, a passing glimpse.

5 Q Did you -- you didn't talk to him at that time?

6 A No, sir.

7 Q Did you examine his clothing for -- after the  
8 strip search -- for evidence of drugs?

9 A Yes, sir.

10 Q Did you find any?

11 A No, sir.

12 Q Mr. Freeman, in your experience as a police  
13 officer with drugs, have you observed people under the  
14 influence of LSD?

15 A Yes, sir.

16 Q And have you taken training in what the symptoms  
17 are and so on?

18 A Yes, sir, this is part of the training.

19 Q Could you describe for us the usual reaction of a  
20 person who has taken LSD in reference to -- and put that in a  
21 time frame, if possible.

22 A Well, I can only relate what I've been taught in  
23 my schooling and what I have learned through my investigative  
24 work.

25 MR. ROBINSON: Objection, Your Honor, if we're going to

1 have testimony of hearsay I want the Court to rule on that.

2 The question, of course, his testimony as to his  
3 personal observances.

4 THE COURT: Yes, I'm going to sustain the objection  
5 unless the answer is limited to his personal observations.

6 Q BY MR. REMAKLUS: Have you observed people under  
7 the influence of what you knew to be LSD?

8 A Yes, sir.

9 Q And do you have any idea of the number of times  
10 that you have had such an opportunity?

11 A It's been on numerous occasions, but I don't  
12 believe I would even be able to give an intelligent guess as  
13 to exactly how many times.

14 Q Could you describe what you have observed with  
15 reference to a person who has taken LSD?

16 A Yes, sir.

17 Q Would you please do so.

18 A From my observations, LSD being a fast-acting drug,  
19 it takes effect real quick, the effects will normally last  
20 around four to six hours, varying a little each way with the  
21 individual and, very possibly, his state of mind or physical  
22 condition at the time it was used.

23 Q Now, what have you observed as far as the actions  
24 of the people who have taken LSD?

25 A I think the actions vary as much as the way you

1 find LSD. If you find a person that is on what they refer to  
2 as a "good trip" they'll appear to have this feeling of  
3 euphoria. They'll also be a little on the drowsy side, their  
4 eyes will be dilated and generally in a fairly happy mood; if  
5 they happen to be on a good trip.

6 Of course, if they are on what is referred to as a  
7 "bad trip" they can be in a state of mind having this excessive  
8 fear and seeing that things that aren't there seems to be more  
9 a negative side.

10 Q Did Mr. Creech display any of those reactions  
11 during the time that you observed him on November 8th of 1974?

12 A No, sir, with exception that he was a little  
13 nervous, this would -- is about the only unusual action that  
14 I noted.

15 Q You've been in the courtroom during all the  
16 hearing here today; have you not, Mr. Freeman?

17 A Yes, sir.

18 Q And you have observed the defendant here today;  
19 have you not?

20 A Yes, sir.

21 Q Could you give us a comparison of his acts and  
22 conduct today as compared with his acts and conduct of  
23 November 8th, 1974?

24 A Well, I think the conduct would be basically the  
25 same because Mr. Creech appears to me to be cooperative today

1 as he was at that time. He didn't appear to be quite as nervous  
2 today as he was then. His facial features, as far as flushness  
3 of face, appears to be about the same.

4 Q. How about matter of speech?

5 A. He was quiet spoken at that time as well as this  
6 time. Of course, I couldn't hear very much that he was saying  
7 from the back of the room, but -- in my opinion, it would be  
8 approximately the same.

9 MR. REMAKLUS: You may examine.

10  
11 CROSS EXAMINATION

12 BY MR. ROBINSON:

13 Q. Detective Freeman, I thought earlier in your  
14 testimony you felt that he was speaking a little slower today  
15 than as you recall him talking to you in Mountain Home -- in  
16 Glenns Ferry?

17 A. Yes, I did, sir.

18 Q. So, when you were comparing the manner of speech,  
19 is that a difference that you noticed here today?

20 A. The speed of the speech was slightly different but  
21 I also believe I stated that he appeared to be a little more  
22 nervous then than he is today.

23 Q. All right. Now, as I understand your testimony  
24 when you transported Carol and Tom to Mountain Home you were  
25 with Officer George Menzik; is that correct?

1 A. Yes, sir.

2 Q. And you were driving?

3 A. Yes, sir.

4 Q. And was this an Elmore County Sheriff's car?

5 A. Yes, sir.

6 Q. And I believe you described the position of the

7 parties was that Carol was center front seat?

8 A. No, sir.

9 Q. Where?

10 A. Carol was sitting in the center portion of the rear

11 seat.

12 Q. Center and rear?

13 A. Yes, sir. There was only two people there, but

14 she was sitting close to Mr. Creech.

15 Q. All right. And was there any partition --

16 A. No, sir.

17 Q. -- between the front and back seat?

18 A. No, sir.

19 Q. No wire mesh or anything of this nature?

20 A. No, sir, we can't afford those.

21 Q. All right. And during the trip of some 25 minutes

22 to a half hour from Glenns Ferry to Mountain Home, conversations

23 took place between Tom and Carol; the nature of which you don't

24 know because their conversation tone was too low?

25 A. This is correct, sir.

1 Q All right. And Detective Freeman, had you been  
2 made aware in the contact that you had with both the police  
3 officers and Tom Creech in Glenns Ferry that Tom had first  
4 identified himself as one Joe Adams?

5 A Yes, sir.

6 Q Joe Carl Adams?

7 A It was Joe Adams, I'm not --

8 Q All right.

9 A -- positive of the center name.

10 Q And were you made aware of the fact that he had  
11 produced driver's license identification of that person?

12 A Yes, sir.

13 Q And then he changed his name to one Turner?

14 A Yes, sir.

15 Q Now that was all before you arrived on the scene?

16 A The false identification was and I'm not positive  
17 of the changing to Tommy Tucker; whether that was already done  
18 prior to my arrival or happened right about the same time.

19 Q Tommy Tucker or Tommy Turner?

20 A Tommy Turner, I'm sorry.

21 Q All right. Now, did you make any search yourself  
22 of the Rivers' car in Glenns Ferry?

23 A No, sir.

24 Q Upon arriving in Mountain Home at approximately  
25 15 till 5:00, 5:00 a.m., is that about the correct time of your

1 arrival?

2 A Yes, sir, somewhere around there.

3 Q Did you interrogate both subjects, Tom Creech and  
4 Carol Spaulding?

5 A Yes, sir.

6 Q Separately?

7 A I believe at first it was together and then  
8 separately to the best of my recollection.

9 Q Did all that take place in the Commissioners'  
10 quarters in Mountain Home?

11 A Yes, sir.

12 Q Now, during this first interrogation in that early  
13 a.m. hour, did Tom Creech maintain the identity of Tom Turner?

14 A Yes, sir.

15 Q Did Carol Spaulding tell her true name?

16 A Yes, sir.

17 Q At all times?

18 A To the best of my recollection she did, sir.

19 Q Did you become aware of the erratic behavior  
20 exhibited by Carol Spaulding?

21 A Yes, sir.

22 Q The profanity?

23 A Yes, sir.

24 Q You heard the testimony of George Menzik regarding  
25 his opinion of whether or not Carol was under the influence?

1 He could not say whether she was or not?

2 A. Yes, sir.

3 Q. From your observation could you determine whether  
4 or not Carol Spaulding was under the influence of drugs at that  
5 time; based upon your experience?

6 MR. REMAKLUS: I'd object, Your Honor.

7 THE COURT: Overruled.

8 THE WITNESS: Carol could very possibly have been under  
9 the influence due to her extreme emotional change back and  
10 forth.

11 There, again, I noticed nothing about her eyes at  
12 that particular time that would indicate it. She kept her  
13 head low except when she would change her, you might say,  
14 personality, then, when she would begin to discuss our  
15 ancestry and others in general, then is about the only time she  
16 would really hold her head up and say what she would say and  
17 then she'd go back into this withdrawal-type mood.

18 Q. BY MR. ROBINSON: All right. Now, did there come  
19 a time in that interrogation period that both Carol and Tom  
20 were put in separate areas for the purposes of sleep?

21 A. I don't quite understand the question, sir.

22 Q. When did you cease interrogation of the two parties?

23 A. Okay. With Mr. Creech I would estimate somewhere  
24 around 7:00 to 8:00, right about that time is when he was  
25 taken to the City Police Station and I was through with him at



1       that time.

2                   I felt that he had told me all he was going to and  
3       I was finished with it and I didn't go back to him at all after  
4       that.

5           Q       Detective Freeman, have you made a written report  
6       of an official nature of your contact on that morning in this  
7       case with these two parties?

8           A       Yes, sir.

9           Q       And have you recently read over your report?

10          A       Yes, sir.

11          Q       And are all the factors contained therein true and  
12       correct as you recall them?

13          A       To the best of my knowledge and belief, yes, sir.

14          Q       All right. And when was that report reduced to  
15       writing?

16          A       That report was done, I believe, the following day  
17       from my notes by myself. I do my own report typing.

18          Q       All right, sir. And following this hour of 7:00 to  
19       8:00 that you ceased interrogation of Tom Creech, did you  
20       continue later that morning to interrogate Carol Spaulding any  
21       further?

22          A       Yes, sir. We went to breakfast and approximately  
23       9:00, or just prior to that, Wess and Maxwell come into where  
24       we were eating breakfast in one of the local restaurants and  
25       we talked for a few minutes over a cup of coffee and arrived at

1 the Sheriff's office at approximately 9:30.

2 Q Was that the El Rancho Restaurant in Mountain Home?

3 A Yes, sir.

4 Q And was this guy Steve Rivers there at breakfast  
5 with you?

6 A Yes, sir.

7 Q And he was with you when the two officers from  
8 Valley County came?

9 A Yes, sir.

10 Q Had you made a search of the Stephen Rivers' vehicle  
11 yet at that time?

12 A Not a thorough search, no, sir.

13 Q When did you make the thorough search that turned  
14 up the drugs?

15 A I believe it was right after we got back from  
16 breakfast with Wess and Jim. So, it would have been around  
17 9:30, in that area.

18 Q Now, were both Jim and Wess present at the search  
19 of the Rivers' vehicle?

20 A Jim was and I'm not positive whether Wess was right  
21 there at that particular moment or not. I just don't remember.

22 Q Would you advise the Court as to what controlled  
23 substances you recovered from that vehicle?

24 A Yes, sir. To the best of my recollection, located  
25 under the Rivers' seat in this '67 Oldsmobile, I believe we

1 recovered approximately 11 rolled marijuana cigarettes. Inside  
2 a match box in that same brown paper bag that was removed from  
3 under that seat was approximately five white tablets that, at  
4 the time, I thought to be amphetamines but later I found out  
5 wasn't.

6 Q What did you find out they were?

7 A To the best of my recollection I believe they were  
8 diphenhydramine; it's an antihistamine tablet that you do get  
9 kind of a little high off of. They are a prescription-type  
10 drug.

11 Q That would be an upper?

12 A Could probably fall into that class, however, it  
13 is not a controlled substance, it's only a prescription drug.

14 Q All right, sir. And what else?

15 A I believe that was all, to the best of my  
16 recollection inside the car.

17 Then, we moved to the trunk of the vehicle and  
18 inside a container containing personal effects of Mr. Rivers  
19 we found two yellow envelopes, each of those two envelopes  
20 containing rolled marijuana cigarettes.

21 There was a brown -- large, plastic prescription  
22 bottle that contained a small self-seal envelope and inside  
23 that envelope I believe was approximately 11 hits of windowpane  
24 acid, or LSD.

25 There was also a pipe located in there, I believe,

1 with marijuana residue and there was numerous medical books with  
2 notations as far as different types of controlled substances and  
3 mixtures and I believe that's all that was found in the trunk.

4 Q So, there were drugs in the Rivers' vehicle to and  
5 including LSD in the form of windowpane?

6 A Yes, sir.

7 Q Did you also interrogate Mr. Rivers?

8 A Yes, sir.

9 Q And was part of his story that he had picked up  
10 other hitchhikers and they had deposited these drugs in his  
11 vehicle; or he didn't know what they left?

12 A I believe what he said was "could have", if I  
13 recall correctly.

14 Q "Could have"?

15 A Yes, sir.

16 Q During the course of the morning of the 8th of  
17 November, 1974, did you have occasion to further interrogate  
18 Tom Creech after breakfast?

19 A No, sir, I don't believe I actually come into  
20 contact with Mr. Creech after that. To the best of my memory  
21 I didn't.

22 Q During the taking of the voluntary statement by  
23 Jim and Wess, were you anywhere in the vicinity?

24 A No, sir, I believe I was called out on a fatality  
25 accident right after lunch, or during that period to where I

1 wasn't in the office or in town during that interview.

2 Q Do you recall, Detective Freeman, at one point  
3 inquiring of Tom Creech as to whether or not he was high?

4 A I believe I asked him if he was under the influence  
5 of any drug or alcoholic beverage at that time.

6 Q And did you tell him he looked like it?

7 A I don't believe so.

8 Q By the time you finished breakfast had there been  
9 a positive identification of Tom Turner as Tom Creech?

10 A Not to my knowledge.

11 Q When did you first determine that the subject's  
12 name, true name, was Thomas Eugene Creech rather than  
13 Tom Turner?

14 A I honestly don't know at what point I did find  
15 that out.

16 Q All right. Had you ever had any previous  
17 experience with a person who was high on LSD, windowpane?

18 A Yes, sir.

19 Q On how many occasions?

20 A It has been numerous of them. One time just comes  
21 to mind right now, but I wouldn't be able to, you know, estimate  
22 exactly how many.

23 Q Had you ever observed any person prior to this  
24 occasion who had been on three 4-way hits and have any idea  
25 as to their tolerance of how many micrograms they could handle?

1           A.     Well, I've been taught that, but I have no way of  
2 knowing whether the people tell me the truth about how many  
3 they have taken or not. I mean, whether they overestimate or  
4 overemphasize or underemphasize that. I know I have had to  
5 transport people to the hospital that had, you might say, OD'd  
6 on LSD and they had to be brought down through medical help.

7           Q.     All right. And, Detective Freeman, did you have any  
8 confidence that the information you were obtaining during  
9 interrogation of Thomas Creech was truth?

10          A.     No, because the girl gave one story and he gave  
11 another.

12          Q.     During this period of time, to your knowledge,  
13 was Tom Creech fed any food?

14          A.     I don't know. I would only be assuming if I gave  
15 an answer, sir.

16          Q.     So, actually your last contact with Tom was  
17 approximately 8:00 a.m.?

18          A.     Somewhere around 7:00 or 8:00 when Patrolman Hill  
19 took him to the City Police Station for incarceration there.

20          Q.     And there was contact for a period of time from  
21 approximately 4:00 a.m. to 7:00 or 8:00, three, three and a  
22 half to four-hour period of time?

23          A.     Well, I wouldn't go so far as saying it was a  
24 full four hours. It was around three or a little better, yes,  
25 sir.

1 MR. ROBINSON: I have no further questions, Your Honor.

2

3

REDIRECT EXAMINATION

4

BY MR. REMAKLUS:

5

Q You say that --

6

7

MR. ROBINSON: Excuse me, Your Honor, there is one point,  
if you don't mind, Mr. Remaklus --

8

MR. REMAKLUS: No objection. Go ahead.

9

10

CROSS EXAMINATION (Continued)

11

BY MR. ROBINSON:

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15

Q Detective Freeman, during this period of time were  
you present or did you become aware that Tom Creech had gone  
into convulsions while there at Mountain Home County Sheriff's  
office?

16

17

A No, sir, this advice is new to me even at this time.  
I wasn't aware of that.

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MR. ROBINSON: All right. Thank you very much.

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REDIRECT EXAMINATION (Continued)

BY MR. REMAKLUS:

Q Did you bring your official report with you to court?

A Yes, sir.

Q Do you have copies for Mr. Robinson and for me?

A All I have is the original, if either can come up with a place to run them off you are both welcome to copies.

Q Thank you. You, in answer to one of Mr. Robinson's questions, you said that the stories given by Miss Spaulding and Tom Creech differed. Do you remember where they differed that day?

A Yes, sir.

Q Would you tell us, please.

A Yes, sir. These were oral statements, Mr. Creech advised that they had left the fair at Spokane, I believe on Monday and they had hitchhiked a ride to Boise, receiving one ride.

When asked what route did they take he gave me Eastern Oregon is the way they come down.

Responding to basically the same questions Miss Spaulding stated that they had received a total of three rides and had stopped in, I believe it was, Lewiston to visit some sort of relative and that they had come on down to Boise from there.



1 I had to ask again did she remember any of the towns  
2 that she came through and she said the only one that she  
3 could remember was Grangeville. So, there was the difference  
4 there.

5 Q And did they refer -- you mentioned they came down  
6 on a Monday. Did you pinpoint any time Monday? Just before  
7 that or any time reference to that?

8 A No, not by any date as I can remember now. I was  
9 left with the impression that it was the previous Monday.

10 Q Just before the arrest?

11 A Yes, sir.

12 MR. REMAKLUS: Thank you.

13 MR. ROBINSON: I have no further interrogation in light  
14 of the new material.

15 MR. REMAKLUS: I have nothing further.

16 Thank you, Mr. Freeman.

17 THE COURT: You may step down.

18 Is it understood, then, that both of you want  
19 copies of this report?

20 MR. ROBINSON: Yes, Your Honor.

21 THE COURT: Would you go ahead and get copies made and  
22 furnish that to them.

23 MR. ROBINSON: I wonder if we could also give  
24 Defendant's B to Detective Freeman and ask if he would make  
25 copies of that one at the same time; the voluntary statement.

1 THE COURT: Well, I think the Clerk can do that.

2 MR. ROBINSON: Fine. Thank you, Your Honor.

3 MR. REMAKLUS: Call Deputy Sheriff Maxwell.

4

5 MARTIN J. MAXWELL,

6 a witness herein, having been first duly sworn, took the stand  
7 and testified as follows:

8

9 DIRECT EXAMINATION

10 BY MR. THOMAS:

11 Q Mr. Maxwell, would you state your name and address,  
12 please.

13 A Martin J. Maxwell and I live at Donnelly, Idaho,  
14 Valley County.

15 Q What is your occupation?

16 A I'm Chief Deputy Sheriff for Valley County.

17 Q How long have you been engaged in law enforcement?

18 A Total of a little over nine and a half years.

19 Q You've been in the courtroom this morning and this  
20 afternoon and heard the testimony given in this hearing; have  
21 you not?

22 A Yes, I have.

23 Q Did you participate, on November 8th, 1974, in any  
24 of the interrogations of the accused, Thomas Creech, in  
25 connection with this case?

1 A. Yes, I did, at the first portion of it.  
2 Q. When was that?  
3 A. That was in the afternoon of November the 8th at  
4 Mountain Home.  
5 Q. Do you recall the time, approximately?  
6 A. It was approximately 1:30 to 2:00 p.m. I can't  
7 recall the exact time.  
8 Q. In the afternoon of November 8th?  
9 A. That's correct.  
10 Q. Do you know whether that was before the voluntary  
11 statement that was introduced into evidence this morning was  
12 given or not?  
13 A. That's --  
14 THE COURT: Just a minute. The record doesn't show  
15 that statement is introduced. I just want to correct that;  
16 either A nor B are introduced as I understand it.  
17 Go ahead, Mr. Thomas.  
18 Q. BY MR. THOMAS: You are familiar with the  
19 statements I'm talking about, though, aren't you, Mr. Maxwell?  
20 A. Yes, I am.  
21 Q. Do you know whether that was taken after you  
22 talked to Mr. Creech?  
23 A. That was taken at the time that I first talked to  
24 Mr. Creech.  
25 Q. Did you have any conversation with him yourself at

1       that time?

2               A.     Very little.

3               Q.     Did you have an opportunity to observe him in  
4       conversation with anybody else?

5               A.     Yes, sir, I did.

6               Q.     Could you describe to us what you observed about  
7       his demeanor, if anything?

8               A.     Mr. Creech appeared to be nervous, I walked into  
9       the interrogation area with Mr. Creech handcuffed to myself.  
10      He was able to "motivate" -- I mean walk, he appeared to be  
11      coordinated good, didn't have any odor -- strong odor of  
12      alcohol, his eyes appeared to be bloodshot.

13              Q.     Do you recall any of the conversation that you or  
14      anybody else had with Mr. Creech?

15              A.     Yes, I do.

16              Q.     Could you describe his speech? Was it clear?

17              A.     His speech was clear. At times he spoke in too  
18      low of a tone of voice to be able to understand him.

19              Q.     Was his manner of speaking or comprehensibility  
20      any different than what you've observed of him here today in  
21      the courtroom?

22              A.     No, I don't believe so.

23              Q.     What did he say that you can remember?

24              A.     As near as I can recall the first words he asked  
25      Officer Woodall and myself if we could get him something.

1 Officer Woodall asked him, as near as I can recall, if he was  
2 nervous and he said he was. At that point I offered him a  
3 cigarette which seemed to calm him down to some extent.

4 Q Do you remember what it was that he asked you to  
5 get him?

6 A He just asked us if we could get him something.

7 Q But you don't remember what he asked for?

8 A No, I don't.

9 Q How long a time did you observe this conversation  
10 with Mr. Woodall?

11 A I was present for approximately five minutes and  
12 I was called from the interrogation room.

13 Q Did you notice anything at all unusual about  
14 Mr. Creech's demeanor or his manner of speaking, his appearance?

15 A Nothing that I can recall other than his nervousness

16 Q Did anybody ask him any questions while you were  
17 in the room?

18 A Yes.

19 Q Was he hesitant in responding at all?

20 A No. In fact, he seemed to be very fast in his  
21 answers, it wasn't a direct question that was asked of him.

22 Q Have you, in the course of your experience as a  
23 law enforcement officer, ever observed anyone under the  
24 influence of LSD?

25 A Yes, I have.

1 Q Did the accused, Mr. Creech, resemble anybody else  
2 you've ever seen under the influence of LSD?

3 A Not at that time, no.

4 Q Not at what time?

5 A At the time of the interrogation or since that  
6 time.

7 Q Mr. Maxwell, did you transport the defendant from  
8 the jail at Mountain Home to the Valley County Jail in  
9 Cascade?

10 A Yes.

11 Q When was that?

12 A That was on the evening of the 8th.

13 Q Evening of the 8th?

14 A That's right.

15 Q Do you remember what time you left Mountain Home?

16 A It would have been around 5:00 or 6:00 in the  
17 evening. I can't recall the exact time.

18 Q What period of time was Mr. Creech with you while  
19 you were transporting him to Cascade?

20 A As near as I can recall we arrived at Cascade at  
21 around 9:00 or 10:00 p.m. in the evening. He would have been  
22 with us for approximately three to four hours during the time  
23 we were transporting him.

24 Q Who else was there?

25 A State Investigator Wesley Woodall and State

1 Investigator Bud Mason.

2 Q Did you travel by automobile on that trip?

3 A Yes, we did.

4 Q Where were you sitting in the car in relation to  
5 Mr. Creech?

6 A I was sitting on the right-rear, Mr. Creech was  
7 sitting in the center between Investigator Mason and myself.  
8 State Investigator Woodall was driving the vehicle; which is  
9 the assigned patrol car that I operate usually in Valley  
10 County.

11 Q Did you have any conversation with the defendant  
12 during that trip?

13 A Very little. He talked back and forth with  
14 Carol Spaulding who was sitting on the right-front of the  
15 vehicle.

16 Q Did you overhear any of that conversation?

17 A Parts of it.

18 Q What parts?

19 A Tom was telling Carol not to worry about things,  
20 this was the type of conversation, the majority of it, and I  
21 can't recall the rest of it.

22 Q Do you recall whether there were any other topics  
23 of conversation besides that?

24 A It was called to my attention as we passed the  
25 area where the victims' vehicle had been parked Tom called my

1 attention and identified that spot on the way back.

2 Q "Tom" is Mr. Creech?

3 A That's correct.

4 Q Did he appear to be confused in any respect in the  
5 conversation you heard him carrying on?

6 A No.

7 Q Was there anything unusual with the conversation or  
8 the way in which he was speaking?

9 A None that I could see.

10 Q Did he appear to you to be under the influence of  
11 any drug that you are aware of?

12 A No.

13 Q You did indicate that you had some conversation  
14 with him yourself. Do you remember anything about that?

15 A At the start of the interrogation --

16 Q Excuse me just a minute. I'm talking about the  
17 trip back to Cascade. Is that what your answer was to relate  
18 to?

19 A Yes.

20 Q Proceed if you will.

21 A I can't recall exactly what was said.

22 Q Was it casual conversation?

23 A Yes, it was.

24 Q Didn't ask him any questions about the case?

25 A No. Mr. Creech did advise me that we should



1 watch for someone in a black vehicle that might try to cause  
2 problems on the way back up; which we were all watching for.

3 Q. Did he describe that situation any further?

4 A. No. At one period of time, about 16 miles south  
5 of Donnelly -- or of Cascade, excuse me, we passed a vehicle  
6 on a three-lane stretch of road and the vehicle backfired.  
7 Mr. Creech became real upset again at that point and seemed to  
8 be very nervous again.

9 Q. With relation to the conversation that you had with  
10 Mr. Creech on the way back to Cascade, did he comment to you  
11 or make any passing reference to Rick Guillaland who had been  
12 in the 7-Eleven store burglary -- or robbery?

13 A. Not at that time, no.

14 Q. Not during that trip?

15 A. Not during that trip.

16 Q. Did he at some other time?

17 A. Yes, at a later date, after a court appearance,  
18 Sheriff Lynskey, Mr. Creech and myself were traveling to Boise  
19 and we were approximately 15, 20 miles south from Cascade and  
20 we overheard radio traffic of an armed robbery that had just  
21 taken place in Boise. Tom, Mr. Creech, advised, I can't  
22 recall exact wording, "Those are my partners" or "Those are  
23 the guys that I pulled the rip-off in Boise with", then gave  
24 details on where they could be located and what they were  
25 driving.

1 Q Did he give descriptions and names?  
2 A Yes, he did.  
3 Q Both descriptions and names?  
4 A Just first names.  
5 Q What first names did he give you?  
6 A Jim and Rick.  
7 Q Did he have any difficulty remembering either of  
8 those names?  
9 A Not as near as I could tell, no.  
10 MR. THOMAS: I have no further questions, Your Honor.  
11

12 CROSS EXAMINATION

13 BY MR. ROBINSON:

14 Q Officer Maxwell, weren't you present when most of  
15 this statement was made?  
16 A No, I was not.  
17 Q How soon after the statement, voluntary statement,  
18 being taken was it that you saw it -- see it? Still that same  
19 day?  
20 A Yes, it was still that same day almost immediately  
21 after it was written I had seen the balance of it.  
22 MR. REMAKLUS: Would you speak up a little more. I  
23 have a little trouble hearing you.  
24 Q BY MR. ROBINSON: Now, so that we can fit this  
25 into the pattern there on the 8th day of November, 1974, what

1 was the hour of your first contact with Tom Creech?

2 A. It would have been around 11:00 a.m. on the  
3 morning of the 8th of November.

4 Q. All right. And where was that?

5 A. That was at Mountain Home at the City Police  
6 Department.

7 Q. All right. And how long were you with him at that  
8 location on that date?

9 A. That was when I had first seen him. I had no  
10 conversation or anything at that time. Again, around 2:00 --

11 Q. Let's get the 11:00 down. How long was the  
12 duration of that encounter?

13 A. Just briefly, not more than three or four minutes.

14 Q. All right. And you had no conversation with him?

15 A. Not at that time, no.

16 Q. What, if any, observations did you make of him at  
17 that time?

18 A. He was just going to a cell area, or what I  
19 believe was a cell area with one of the local officers down  
20 there. He appeared to be handcuffed and that was about all  
21 I could really see. He was just going into the area.

22 Q. I take it from the way you speak of that you  
23 weren't close enough to ascertain whether he was a person who  
24 was intoxicated on drugs or of clear mind at that point?

25 A. I saw him moving for approximately three or four

1 strides and he appeared to be walking good and steady, from  
2 what I could see. I couldn't see any facial expressions or  
3 anything like that at that time.

4 Q All right. Then, Officer Maxwell, your next  
5 encounter with Tom Creech was, you say, at 2:00?

6 A Close to 2:00, yes.

7 Q And where was that?

8 A That was, again, at the Mountain Home Police  
9 Department. At that time I went in and I was introduced to  
10 him. I can't recall how the -- what the introduction was and  
11 Officer Woodall and myself advised him of our reason for being  
12 there and he was handcuffed to me and we went into the  
13 interrogation area.

14 Q Of the Police Department or the Sheriff's office?

15 A Of the Police Department.

16 Q Of the Police Department?

17 A Yes.

18 Q All right. How long were you with him at that  
19 time?

20 A Approximately five minutes and then I was advised  
21 that the Judge was ready for Carol Spaulding to come up for  
22 arraignment and I had to leave to go for that.

23 Q All right. And, then, next, after you left, when  
24 did you again recontact Tom Creech?

25 A At the time that we were getting ready -- it would

1 have been around 5:00 as near as I can recall, getting ready  
2 to proceed back to Valley County.

3 Q During this entire period of time, to your  
4 knowledge, had Tom Creech been kept at the Mountain Home  
5 Police Department?

6 A Yes, to my knowledge he was.

7 Q And Carol, then, was kept over at the County Jail?

8 A Yes.

9 Q Officer Maxwell, what, if any, information during  
10 the course of that day did you have of Tom suffering  
11 convulsions?

12 A I had none whatsoever.

13 Q Today is the first time you've heard of anything  
14 in that regard?

15 A That's correct.

16 Q All right. In your presence during that time  
17 prior to transporting, did you ever hear Tom state that he  
18 needed help?

19 A Right at the time that we first went into the  
20 interrogation area Tom made an admission and, then, he stated  
21 that he did need help at that time.

22 Q Made what admission?

23 A He cried, as near as I can recall, three times,  
24 "I did it, I did it, I did it".

25 Q And was he sobbing and crying at that point?

1           A.     He appeared to be nearly in tears. He wasn't  
2 at that time.

3           Q.     And did he ask for help?

4           A.     As near as I can recall his exact words were to  
5 the effect "I need help" and at that point he asked for something.  
6 I don't know what he was referring to; whether it was  
7 medication or drugs or what, and I offered him a cigarette and  
8 we attempted to calm him down.

9           Q.     And then you left within five minutes?

10          A.     Yes.

11          Q.     Now, from your trip that commenced approximately  
12 5:00 p.m. that evening and transporting Tom and Carol back to  
13 Valley County, Cascade, was there any period of time during  
14 that trip that Tom went to sleep?

15          A.     Not to my knowledge, no.

16          Q.     All right. Now, what was it you were specifically  
17 referring to of this black car?

18          A.     Mr. Creech had advised me that he had a brother  
19 that belonged to a motorcycle gang and he believed him to be  
20 in the area; either to try to assist him in escaping or to  
21 make an attempt on his own life. I don't know which way it  
22 was.

23          Q.     Did you, at that point, gain any impression that  
24 possibly Tom Creech was hallucinating?

25          A.     Not at that time, no.

1 Q Did he identify the vehicle as a "Chevelle" or  
2 refer to it as a "Chevelle"?  
3 A Yes, he did.  
4 Q When you are speaking of this three-lane road where  
5 a car backfired, was that the three-lane road up in Round  
6 Valley?  
7 A That's correct.  
8 Q What is that, 12 to 20 miles south of Cascade?  
9 A I believe it's right at 15 miles.  
10 Q All right. And would you describe to the Court  
11 the actions of Tom Creech at the time that that occurrence  
12 took place?  
13 A Tom slid way down in the seat, at the same time  
14 Officer Mason and myself both looked to see what was going on  
15 from the vehicle and from Tom, both. We were a little nervous  
16 ourselves.  
17 Q All right. Now, prior to that occasion had Tom  
18 gone to an episode of the shakes based upon his fear of coming  
19 back into Valley County?  
20 A At the time that I had given him the cigarette he  
21 was trembling visibly and appeared to calm down after he had a  
22 cigarette.  
23 Q This was at 2:00 p.m., the afternoon?  
24 A That's correct.  
25 Q Just prior to the voluntary statement being made?

1 A. Yes.

2 Q To your knowledge, during this entire period of  
3 time from when you first became aware of Tom's presence and  
4 your having met him and seen him, to your knowledge, was any  
5 medication given to him by any police officer or any doctor,  
6 county physician or otherwise?

7 A. Not to my knowledge, no.

8 Q You say that you had read the voluntary  
9 statement obtained by Wess prior to leaving for Cascade?

10 A. Yes, I had.

11 Q And weren't the fellows Marsh and Rick identified  
12 in that statement? And also their address in Boise?  
13 Their addresses?

14 A. I don't recall if the addresses were or not, but  
15 I do recall the names, yes.

16 Q And then something having to do with a robbery of  
17 a beverage store in Boise was contained in that voluntary  
18 statement also; is that correct?

19 A. That's correct.

20 Q Now, when Mr. Remaklus inquired about this trip to  
21 Boise where Tom identified Jim Marsh and Rick Gillaland, how  
22 long after his incarceration at Valley County was it that  
23 that trip was made?

24 A. It was sometime -- I can't recall how long it was.

25 Q A week, ten days, maybe?



1 A. I believe so, or longer. I don't recall.

2 Q. Officer Maxwell, on the 8th day of November, 1974,  
3 did you personally interrogate Tom Creech?

4 A. No, I did not.

5 MR. ROBINSON: No further questions -- excuse me just  
6 a minute.

7 Your Honor, may we have a short recess for  
8 convenience?

9 THE COURT: We'll take a ten-minute recess.

10 (Recess taken.)

11 MR. ROBINSON: Your Honor, I had just one other  
12 area of inquiry before Mr. Thomas commences his re-examination.

13 THE COURT: Very well.

14

15 CROSS EXAMINATION (Continued)

16 BY MR. ROBINSON:

17 Q. Officer Maxwell, after November the 8th of 1974,  
18 for quite some period of time Tom Creech was incarcerated at  
19 Valley County; is that correct?

20 A. Two days, as near as I can recall.

21 Q. Just two days?

22 A. I believe that was the time period, yes.

23 Q. All right. Then, the next incarceration up  
24 there was just sporadic as to other motions and, then, a  
25 trial in May of '75; is that correct?

1 A. That's correct.

2 Q. During this period of time did you personally  
3 witness Tom freaking out?

4 A. No.

5 Q. At any time at all?

6 A. No.

7 MR. ROBINSON: I have no further questions.

8

9

REDIRECT EXAMINATION

10 BY MR. THOMAS:

11 Q. Getting back for just a moment, Officer Maxwell,  
12 to the conversation that you had with Mr. Creech on the ride  
13 back to Boise in which Rick's name was mentioned. Do you have  
14 a recollection when that might be?

15 A. I just checked during the recess with Ada County  
16 and their records -- they showed that Rick and Jim were  
17 arrested on the 22nd of November, 1974.

18 Q. What does that mean to you?

19 A. Immediately after Tom had advised us of these two  
20 men being his partners in an armed robbery we radioed,  
21 Sheriff Lynskey and myself radioed the Idaho State Police in  
22 Boise and they put out the information that we gave them as  
23 to where these persons could be located, what type of vehicle  
24 they were operating and who they were.

25 A little over five minutes had gone by and they

1 put out a cancellation because they had them in custody.

2 Q I'm trying to pin down the date of the  
3 conversation when you were in the car with Mr. Creech and  
4 mentioned Gillaland's name and described him in that way.

5 A November 22nd.

6 Q The material you have just related refreshes about  
7 that date in some way?

8 A Yes.

9 Q You mentioned, during Mr. Robinson's  
10 cross-examination that the defendant was asking for help after  
11 admitting -- or making an admission, said he needed help. Do  
12 you recall that testimony?

13 A Yes, I do.

14 Q Did the defendant elaborate on his statement that  
15 he needed help in any way?

16 A No, he didn't.

17 Q Did he relate that call for help to drugs or  
18 being under the influence of drugs in any respect?

19 A No. I assumed it to be he needed help on the  
20 situation that he was in at the time.

21 MR. THOMAS: No further questions, Your Honor.

22 MR. ROBINSON: Nothing further, Your Honor.

23 THE COURT: You may step down.

24 MR. REMAKLUS: Call Mr. Woodall.

25

1 WESLEY L. WOODALL,  
2 a witness herein, having been first duly sworn, took the stand  
3 and testified as follows:

4  
5 DIRECT EXAMINATION

6 BY MR. REMAKLUS:

7 Q. State your name, please.

8 A. Wesley L. Woodall.

9 Q. Where do you live, Mr. Woodall?

10 A. In Post Falls, Idaho.

11 Q. How long have you been up there?

12 A. Four months.

13 Q. And who is your employer?

14 A. State of Idaho.

15 Q. And in what department and what's your job, please.

16 A. Investigator in the Bureau of Investigations  
17 which entails liquor law enforcement and criminal investigations  
18 for the State of Idaho.

19 Q. And before moving up to Post Falls, you had been  
20 living in Boise, Idaho?

21 A. Yes.

22 Q. How long have you been engaged in law enforcement,  
23 Mr. Woodall?

24 A. Been in law enforcement 13 years.

25 Q. And how long have you worked for the State?

1           A.     A little over two years.

2           Q.     Where did you work before that?

3           A.     Chief of Police in Pierce for three years. I was  
4 Deputy Sheriff of Minidoka County, Chief Deputy Sheriff of  
5 Cassia County.

6           Q.     And you've been in law enforcement continuously  
7 for the last 13 years?

8           A.     Yes.

9           Q.     Directing your attention to November 8th, 1974,  
10 did you have the same job you have now?

11          A.     Yes, I did.

12          Q.     You were working out of Weiser at that time;  
13 weren't you?

14          A.     Yes.

15          Q.     And did you have occasion to go down to  
16 Mountain Home, Idaho with Valley County Deputy Sheriff  
17 Jim Maxwell?

18          A.     Yes, I did.

19          Q.     And were you there on this day that we've been  
20 talking about here at this hearing?

21          A.     Yes.

22          Q.     How did you get down there? Did you take your  
23 car or the Deputy's car?

24          A.     We went down in Deputy Sheriff Maxwell's county  
25 car.

1 Q And on that occasion did you see the defendant,  
2 Thomas Creech?  
3 A Yes, I did.  
4 Q One and the same person sitting here at counsel  
5 table with Mr. Robinson?  
6 A Yes.  
7 Q And about what time was it on that day when you  
8 first saw him?  
9 A About 2:00 in the afternoon.  
10 Q And where was that?  
11 A In the Mountain Home, City Police Department Jail.  
12 Q Who was present?  
13 A Myself, Deputy Maxwell and an officer from  
14 Glenns Ferry named William Hill, a Lieutenant on the  
15 Mountain Home Police Department, I don't remember his name.  
16 Q And did you --  
17 MR. REMAKLUS: If I might approach the bench, Your Honor,  
18 I need Defendant's Exhibit A, I think.  
19 THE COURT: I left them in chambers.  
20 (Brief delay.)  
21 Q BY MR. REMAKLUS: Handing you what's been marked  
22 for identification as Defendant's Exhibit B, would you look  
23 at that, please.  
24 Mr. Woodall, does that appear to be the voluntary  
25 statement you took from the defendant, Thomas Creech, on

1 November 8th, 1975 -- or '74?

2 A. Yes, photographic copy. Yes, this is a copy of it.

3 Q. Going back to when you first saw Mr. Creech at  
4 Mountain Home, did you have any conversation with him prior to  
5 the taking of this statement?

6 A. Yes.

7 Q. And could you tell us what that was?

8 A. I identified myself to him, told him that I was  
9 an Investigator, that I was a police officer. I took a card  
10 from my pocket, read his rights to him off the card, told him  
11 he didn't have to talk to me, asked him if he did want to  
12 talk to me, talked with him several minutes about his rights,  
13 Miranda. He seemed to understand everything he was told, I  
14 asked if he could read and write and if he understood  
15 English.

16 Q. And what were his replies?

17 A. Affirmative to all the questions.

18 Q. Yes.

19 A. And that he would talk to me.

20 Q. Now, do you have any idea of how long you talked  
21 with the defendant before you started taking this statement?

22 A. Just a few minutes, two or three minutes.

23 Q. And did -- referring to the statement, the  
24 photocopy of the statement that you have there, on Page 1,  
25 where all of the printing at the top of Page 1, where the

1 blanks are filled in, was that done by you?

2 A. Yes, it was.

3 Q. Is this the 2:00 p.m., is that when you started  
4 taking this statement?

5 A. It was 2:00 p.m.

6 Q. And starting out with your first question there,  
7 is that what you asked, or the statement that you made to the  
8 defendant about the double murder?

9 A. Yes, it is.

10 Q. And is that his answers, spoken answer, "I did it,  
11 I did it, I did it"?

12 A. Yes.

13 Q. Now, would you describe the procedure that you  
14 used in taking this statement?

15 A. After, at some length, advising him of his rights  
16 to remain silent and his rights per Miranda, I filled out the  
17 top of this form reading it to him.

18 Q. Did you read him the printed part at the top of  
19 the page?

20 A. Yes.

21 Q. All of it?

22 A. Yes.

23 Q. Proceed, please.

24 A. I read all the printed paragraphs there, told him  
25 that at any time if he wanted to stop just say so; that we



1       would stop and I just asked him a question.

2               Q       And then would you ask the question and then

3       print it out? Is that the way you did it?

4               A       Most of this was spontaneous. He kept talking,

5       I had to tell him "Now, wait a minute, let me get this down,

6       let me write it". He would continue talking.

7               So, in some places I left a little blank where I

8       -- to pick it up if he stopped talking, but he'd go on

9       talking about the incidents that happened and where they

10       came from.

11              Q       And was Mr. Hill there at all times?

12              A       Yes.

13              Q       Who was there at the beginning of the statement?

14              A       Deputy Sheriff Maxwell, myself and Officer Hill.

15              Q       And then did Deputy Maxwell leave?

16              A       Yes.

17              Q       And was there another officer then present?

18              A       Just Officer Hill and myself. Another officer

19       came in from the Mountain Home Police Department, but I don't

20       know his name and he didn't stay during the entirety of it;

21       he was there for a while and then left.

22              Q       All right. Now, I notice that you have the time

23       started at 2:00 and time finished as 4:00 p.m.; is that

24       correct?

25              A       Yes.

1 Q Directing your attention to the several pages,  
2 these statements that appear here that you have attributed  
3 to Mr. Creech, were made by him and you then wrote them down;  
4 is this correct?

5 A Yes. This is, basically, all that I could write  
6 down and still try to keep up with him. As he talked and  
7 tried to get him slowed down, his talking so I could write it  
8 down.

9 Q And what was the -- during this two hours you  
10 had an opportunity to observe him; did you not?

11 A Yes.

12 Q And would you describe his actions and conduct?

13 A He was excited appearing, he was upset, his  
14 speech was clear, his recollection of events in the past was  
15 unbelievably good. I couldn't believe a person could --  
16 traveling through an area could recall the places and the  
17 towns and highways as well as he did, having just went over it  
18 once. It was very good -- he was very good at that.

19 At a couple different times he did appear shaken,  
20 upset.

21 Q Did you have an opportunity to observe his  
22 appearance at that time?

23 A Yes.

24 Q And would you describe that to us, please.

25 A Basically the same as it is now, his eyes were

1 bloodshot, he was, probably, a little tanner and a little less  
2 flesh on him. He was thinner. Basically he looked the same  
3 as he does now other than his eyes were bloodshot a little  
4 bit.

5 Q Yes. Now, would you explain -- the signature  
6 appearing at the bottom of the page -- of each of these  
7 seven sheets, was that affixed by the defendant?

8 A Yes, it was.

9 Q And would you explain about the letters "TEC"  
10 that appear frequently throughout the statement?

11 A Everywhere where I made a cross over or crossed  
12 out something or put a line through an empty space, I  
13 explained to Tom that I wanted him to initial this so I  
14 couldn't add anything or somebody else couldn't add anything  
15 to it.

16 Q Was this then these lines and initials affixed  
17 after you made the -- the statement was made?

18 A The entire statement was made then the lines  
19 were put in, the initials on them and all of them signed one  
20 right after the other.

21 Q Did you check the printed matter as you went  
22 through it here, item by item, for the initialling?

23 A Yes. I also asked Tom to read this. If there  
24 was anything he wanted changed, we would change it and he  
25 could initial that.

1 Q And did he make any changes?

2 A There was one, I believe, yes, on Page 2, the  
3 bottom two lines there's some changes made there that were  
4 Tom's changes.

5 Q And which -- read us the changes, will you please?

6 A "I shot" -- initially it was "Wayne". When Tom  
7 read this he said "No, it was Tom" that he shot first.

8 Q All right.

9 A "I shot him" -- there was "three times". Tom  
10 said "No, that was one time" and Wayne -- well, those are  
11 the changes.

12 Q And did he affix his initials "TEC" to those  
13 three changes?

14 A Yes.

15 Q And did you check all pages of the statement that  
16 closely, Officer Woodall?

17 A Went back over it with Tom reading it and he  
18 would say "Yes".

19 Q And did you observe him read each page?

20 A Yes.

21 Q And then when did he sign it?

22 A Started back on the first page, signed Page 1,  
23 then two, then three, all the way through.

24 Q Did you watch him sign each time?

25 A Yes.

1 Q And that is your signature, then, as a witness?  
2 A Yes.  
3 Q And whose is the other signature?  
4 A William Hill.  
5 Q Was he present during all this time?  
6 A Yes.  
7 Q Did you watch him affix his signature on each  
8 page?  
9 A Yes.  
10 Q After the statement was taken did you accompany  
11 -- did you drive the car up to transport --  
12 A Yes, I did.  
13 Q -- the defendant to Cascade?  
14 A Yes.  
15 Q And you were driving the Valley County Deputy's  
16 vehicle; is that correct?  
17 A That's correct.  
18 Q Do you remember where everyone was sitting on  
19 the trip back from Mountain Home to Cascade?  
20 A Carol Spaulding was in the front, A. R. Mason  
21 was on the left-rear, Tom Creech center, and Jim Maxwell  
22 right-rear.  
23 Q Were there conversations? Did you overhear any  
24 conversations or engage in any conversation with the  
25 defendant at that time?

1           A.    I could hear him talking to Bud Mason and there was  
2           some other conversation.  I was driving and watching the road  
3           and I don't recall the context of it.

4           Q.    What time did you get up to Cascade; do you recall?

5           A.    Somewhere close to 10:00.

6           Q.    Ten o'clock at night; wasn't it?

7           A.    Yes.

8           Q.    Still on the 8th; wasn't it, Wess?

9           A.    Yes.

10          Q.    Have you -- when was your last contact with  
11          Tom Creech on that day?

12          A.    Probably around midnight that day.

13          Q.    And did he appear in Court that night, after you  
14          got in?

15          A.    Yes.  Judge Elam was there and yourself, he did  
16          appear in a court appearance.

17          Q.    And were you there during the court appearance?

18          A.    Yes.

19          Q.    Did you have an opportunity to observe the  
20          defendant at that time?

21          A.    Yes.

22          Q.    And how would you describe his actions?

23          A.    As they -- as a normal person would react, shaken,  
24          probably, being, probably, very tired.

25          Q.    Was there anything unusual that you observed that

1 evening?

2 A. Nothing that any other person would show,  
3 exhaustion after the length of time that he had been up.

4 MR. REMAKLUS: You may inquire.

5

6

CROSS EXAMINATION

7

BY MR. ROBINSON:

8

9

Q. Officer Woodall, was this session out of which  
this voluntary statement came from tape recorded?

10

A. No, it wasn't.

11

12

Q. No tapes during the entire period of 2:00 p.m.  
until you finished around 4:00, 4:30?

13

14

A. Not to my knowledge. I took a tape recorder with  
me and it wouldn't work when I got there.

15

16

Q. So, to your knowledge there exists no Cassette  
tape or any other kind of tape of that session?

17

A. That's true.

18

19

20

Q. All right. Now, had you already started the  
voluntary statement prior to the time that Deputy Maxwell had  
to leave?

21

A. Yes.

22

23

24

Q. And when you got to the point on the first page  
where Tom made a statement to you "I killed those two guys,  
I need help" you have a line in there leaving a space.

25

A. Yes.

1 Q For what reason?

2 A I can recall some of the conversation that should

3 have been filled in that would have been had there been time

4 left -- time enough to do it. This conversation -- I said

5 "What do you mean you need help? Are you crazy"?

6 He said "I must be".

7 I said "Why"?

8 He said "Well, you don't go around killing people,

9 do you"?

10 That's, basically, what -- after he said he

11 killed those two guys is what he said there.

12 Q So, there you have a line drawn in because there

13 were other points being made at the time that you couldn't

14 catch up with and write that fast to get them in?

15 A That's true.

16 Q All right. Now, just before that is another

17 line in a diagonal position with the two -- most of two lines

18 left blank after he had said "I did it, I did it, I did it,

19 crying". You have the words "when". Do you recall

20 specifically what that conversation related to?

21 A Not -- no, not specifically. Jim started to ask

22 him a question and, if I recall right, that's when Jim

23 offered him a cigarette and he lit a cigarette.

24 Q Would you describe his condition at that time as

25 to calmness and being in or out of control?



1           A.     He was in control of himself, he was obviously  
2 shaking, his hands were shaking slightly. He was at a point of  
3 almost in tears. He was -- appeared to be in a crying tone of  
4 voice when he said "I did it, I did it, I did it".

5           Q.     Now, as I understand your testimony about reducing  
6 this session of conversation between yourself and Tom Creech,  
7 reducing the same to a written form; that you had great  
8 difficulty in keeping up with the statement being made and  
9 getting it all down in writing; is that correct?

10          A.     That's correct.

11          Q.     I believe your description was, it was just a  
12 voluntary -- would you describe it as a flow or just a  
13 bubbling out of information?

14          A.     Not exactly.

15          Q.     Will you describe it in your own words,  
16 Officer Woodall? You were there.

17          A.     Most of the statement didn't come out -- I did  
18 ask him some questions, like I would say "Now, wait a minute,  
19 Tom, let's back up, did you say 'Lewiston' or 'Grangeville',  
20 let me get this down".

21                 "What was the highway number?" or what was the  
22 name?" -- I would stop him and back him up and we would  
23 start in again where I couldn't -- try to get the information  
24 that he was telling me down in the order that he was telling  
25 me. I would stop him and ask him a question to start back.

1 Q Is it fair to describe the words being omitted by  
2 Tom -- omitted by Tom as a flow of information?

3 A Probably.

4 Q Did you have to pull it out of him?

5 A No.

6 Q Did you have to ask questions in order to get him  
7 to go on further?

8 A He was willing to keep talking. I did ask  
9 questions to verify points in my own mind of what his meaning  
10 was, what he was telling me or, as I was trying to write one  
11 thing he was still talking and I would stop him to get it  
12 clear in my mind what he was telling me.

13 But, the points he was telling me was his own  
14 story.

15 Q Is it possible you could have gotten some of the  
16 wording in this voluntary statement out of sequence also?

17 A This would not be exact or verbatim of what his  
18 precise words were. I'm sure this would be impossible unless  
19 I was trained as a Court Reporter.

20 Q Or had a tape recording?

21 A Or had a tape recording.

22 Q All right. Now, you too have been present here  
23 in the court during the testimony of the other officers that --

24 A Yes.

25 Q -- where the arresting officer, those that had

1 custody of Tom prior to 2:00 p.m. on the 8th; have you not?

2 A. Yes, I have.

3 Q. And you've heard the testimony about Tom identifying  
4 himself first as a Joe Adams and, then, as a Tom Turner?

5 A. Yes.

6 Q. And at 2:00 p.m. you started this statement out  
7 with the name, "I, the undersigned, Thomas Eugene Creech"?

8 A. Yes.

9 Q. At this time Tom Creech had been positively  
10 identified as his true and correct name, Thomas Eugene Creech;  
11 is that correct?

12 A. Only by his own statement.

13 Q. By his own statement?

14 A. He told me his name was Thomas Eugene Creech.

15 Q. When?

16 A. At the beginning of this statement when we first  
17 started talking to him.

18 Q. Is that the first time that that true name had  
19 come forward; to your knowledge?

20 A. To my knowledge that's the first.

21 Q. Do you know whether at any time prior to that  
22 time there had been any fingerprinting and record checking in  
23 order to establish identity?

24 A. I think he had been fingerprinted, I'm not sure.  
25 I wasn't there.

1 Q All right.

2 A But, as far as I know there's no other name.

3 Q I direct your attention to Page 2 at the bottom of  
4 the page and, Mr. Thomas, I'll -- it's your copy.

5 On the next to the last line "I shot" and, then  
6 the initials "TEC", "Tom" with a stricken name, "Wayne first".  
7 "I shot him" -- initials "TEC", "one time" interlineating the  
8 number "three", "one time", "TEC".

9 Then "Wayne had a knife and came at me, I hit him  
10 with the end of the gun" -- initials "TEC", "he fell back and  
11 I shot him three times."

12 Now, is it possible that the sequence of those  
13 events were stated differently by Tom but this is the way you  
14 copied them down?

15 A I would have no reason to think so.

16 Q All right. Let me ask, Officer Woodall, if you  
17 would reflect back to the conversation on that day and whether  
18 or not you can recall exactly what was said in relationship  
19 to Wayne having a knife. Was the knife open? Was it used?  
20 Was that while Carol was out of the car? Do you recall that  
21 specific area? If you do, tell us what you remember as to the  
22 sequence.

23 A If I recall, he said that Carol was out of the car  
24 relieving herself and he shot -- now, this would be after the  
25 first statement was corrected; that he shot the driver once,

1 he turned around, the man in the back seat had a knife and he  
2 shot him three times in the face. This would be Wayne.

3 Q Did you make any inquiry as to whether that knife  
4 had been exhibited or used prior to that time by Wayne Bradford  
5 on Tom Creech?

6 A Not that I recall.

7 Q Have you read the reports of the other officers,  
8 especially that of Officer Hill as it relates to this particular  
9 sequence of events stated, not only by Tom Creech, but also  
10 by Carol Spaulding?

11 A I read Officer Hill's report quite some time ago.  
12 I don't recall that particular area of it, but, basically --

13 MR. ROBINSON: May I approach the witness, Your Honor?

14 THE COURT: Yes.

15 Q BY MR. ROBINSON: Officer Woodall, I don't have  
16 numbers, but I'm directing your attention to what purports to  
17 be William S. Hill's typewritten report and it's the second  
18 page from the last seven lines from the bottom and ask you to  
19 read from that area to the bottom of the page.

20 A "He told about -- "

21 Q I don't need you to read it aloud, just read it  
22 to yourself.

23 MR. REMAKLUS: May I approach the witness to see what  
24 he's referring to, Your Honor?

25 MR. ROBINSON: I'll hand it to you, Mr. Remaklus.

1 Q BY MR. ROBINSON: Now, after having referred to  
2 Officer Hill's report now, is this the same Officer Hill that  
3 was in the room with you during the interrogation and voluntary  
4 statement; is that correct?

5 A Right.

6 Q And Officer Hill would not have been able to make  
7 this written report about those circumstances unless the  
8 written report was made after that session; would it?

9 A That's true.

10 Q Now, after reading his report and statement, does  
11 that refresh your memory any as to sequence of events stated  
12 by Tom Creech as to when the knife first came about in sequence  
13 to the shooting, or shootings?

14 A No, sir, it doesn't.

15 Q All right. Then, Officer Woodall, would you state  
16 whether or not in your opinion the voluntary statement, as you  
17 copied it down, under the circumstances, can be relied upon  
18 as accurate or not?

19 A Yes, I would say it's quite accurate.

20 Q Do you have any knowledge, yourself, as to  
21 information about Tom Creech going into convulsions on the 8th  
22 or 9th of November?

23 A No, I don't.

24 Q Have you, in your experience and contact with  
25 Thomas Eugene Creech, while incarcerated, ever seen him in a

1 condition of freaking out?

2 A. I don't understand "freaking out". What extent  
3 you would want me to refer to.

4 Q. Erratic behavior and making such comments that the  
5 devil was after him?

6 A. I never saw that, no.

7 Q. You have never seen that?

8 A. When we got to Valley County Jail he asked for  
9 medication and wanted to see a doctor and asked for some  
10 medication. He was obviously shaken.

11 Q. At this point were there any symptoms that you had  
12 seen that told you that he was in need of medication or  
13 medical attention?

14 A. His appearance, to me, looked like somebody that,  
15 in my experience I've seen alcoholics that needed a drink.  
16 This is what this looked like to me.

17 Q. Would you describe his condition as that of  
18 withdrawal?

19 A. He kept asking for -- to see a doctor and he wanted  
20 something. There was nothing -- he wasn't -- in any danger or  
21 anything that I could see. I saw nothing that really indicated  
22 to me that he was sick or in dire need of anything to keep his  
23 health or sanity.

24 Q. Was he agitated?

25 A. He was very nervous, very obviously upset.

1 Q More so at that time when you got to Cascade than  
2 he was during the interrogation?

3 A No, he was -- no, I don't think so. At the start  
4 of the interrogation he was more nervous than when we got  
5 to Cascade. He was more relaxed then.

6 Q But, when you got to Cascade he was looking for  
7 medication and medical attention?

8 A Yes.

9 Q When was that that you got to Cascade?

10 A Between 9:00 and 10:00 in the evening.

11 Q Nine and ten in the evening? Of the 8th or 9th?

12 A Yes, 8th.

13 MR. ROBINSON: On the 8th?

14 I have nothing further, Your Honor.

15

16 REDIRECT EXAMINATION

17 BY MR. REMAKLUS:

18 Q Mr. Woodall, after the statement was taken and  
19 you went through it with Mr. Creech, you say you went through  
20 it carefully to give him an opportunity to correct the same?

21 A Yes.

22 Q And he only made the corrections that you have  
23 already told us about?

24 A Yes.

25 Q Was that the purpose of reviewing it with him;



1 was to correct it if it was in error?

2 A. Yes.

3 MR. REMAKLUS: I have no further questions.

4 MR. ROBINSON: I have nothing further.

5 THE COURT: You may step down.

6 MR. REMAKLUS: Your Honor, we have no further witnesses  
7 to call at this time. However, I would ask that this hearing  
8 be continued to give us an opportunity to meet some of the  
9 testimony and the things that came out in the hearing. We,  
10 of course, had no affidavit or no basis upon which to go on to  
11 prepare for this and we have other witnesses we think will be  
12 very helpful in establishing what happened at this time and  
13 place.

14 THE COURT: Well, what period of continuance are you  
15 asking for?

16 MR. REMAKLUS: Well, until Monday.

17 THE COURT: We're going to start the jury trial Monday.  
18 I'm not going to recess that.

19 MR. REMAKLUS: Well, perhaps we can get them here  
20 tomorrow afternoon.

21 MR. ROBINSON: I'll be available at any time.

22 THE COURT: The Clerk won't. She's got a wedding  
23 tomorrow.

24 MR. REMAKLUS: Well, we have to call witnesses from  
25 Southern Idaho and I think we're entitled to -- in view of the

1 stipulated documents.

2 THE COURT: Did you have something further to present,  
3 then, Mr. Remaklus?

4 MR. REMAKLUS: No, thank you, Your Honor.

5 THE COURT: I mean, as far as what your additional  
6 evidence is going to be.

7 MR. REMAKLUS: No, no, we have nothing further.

8 THE COURT: You are going to rest?

9 MR. REMAKLUS: Yes.

10 THE COURT: Proceed with your rebuttal, Mr. Robinson.

11 MR. ROBINSON: Yes, Your Honor.

12 At this time, not only do I want to move admission  
13 of Defendant's A and B, I would like to approach the Clerk and  
14 have two other exhibits marked.

15 THE COURT: Very well.

16 MR. ROBINSON: Your Honor, could I impose upon the  
17 Court to put a staple in this.

18 (Defendant's Exhibits C and D marked for  
19 identification.)

20 THE COURT: You are offering A and B, then?

21 MR. ROBINSON: Yes, Your Honor.

22 THE COURT: Any objection to A and B?

23 MR. REMAKLUS: What was -- excuse me, what was A?

24 THE COURT: A is the handwriting exemplar and B is the  
25 statement.

1 MR. REMAKLUS: I have no objections.

2 THE COURT: A and B will admitted.

3 (Defendant's Exhibits A and B admitted into evidence.)

4 MR. ROBINSON: I represent to the Court that Defendant's  
5 Exhibit C is a photocopy, typewritten of Officer William Hill's  
6 report, official report, that he made regarding the circumstances  
7 in his participation in the arrest and in the interrogation  
8 session and we would offer that into evidence.

9 MR. REMAKLUS: I have no objections.

10 THE COURT: C will be admitted.

11 (Defendant's Exhibit C admitted into evidence.)

12 MR. ROBINSON: Your Honor, I represent to the Court that  
13 Defendant's Exhibit D is the official report, typewritten, of  
14 Detective Jack Freeman that he testified to and provided us  
15 a copy with and I offer that.

16 MR. REMAKLUS: No objection.

17 THE COURT: D will be admitted.

18 (Defendant's Exhibit D admitted into evidence.)

19 MR. ROBINSON: The same on these, Your Honor, as was on  
20 Defendant's Exhibit B; these are my copies out of my files and  
21 I'd like to have a copy made of the same so that I could have  
22 my files complete.

23 THE COURT: All right. I ask that to be done and let  
24 you have copies back.

25 Any further rebuttal, then?

1 MR. ROBINSON: No further rebuttal, then on this motion  
2 to suppress.

3 THE COURT: Both sides rest?

4 MR. ROBINSON: Yes, Your Honor.

5 MR. REMAKLUS: Yes, Your Honor.

6 THE COURT: All right, I'll hear your closing arguments,  
7 then.

8 Mr. Robinson, I'll give you the right to open and  
9 close the argument.

10 MR. ROBINSON: Thank you, Your Honor, I'll try to be  
11 very, very brief.

12 In this relationship, first of all the Court has  
13 heard the testimony of the defendant, I would like the Court  
14 to specifically look at the signature exemplar provided us by  
15 Mr. Creech and the signatures and handwriting that he placed  
16 upon the voluntary statement; not in relationship as to whether  
17 he did or did not in fact write that signature on there, but  
18 the manner in which it is written, in the shakey form that it  
19 is written as to what his condition was at that time in  
20 relationship to the testimony and -- and of his having taken  
21 three 4-way hits of LSD windowpane and under the influence of  
22 that drug at the time of the voluntary statement that was made.

23 In a way, Your Honor, I can admit to the Court that  
24 now, maybe this makes a lot of difference and maybe it doesn't  
25 in light of what I stated to the Court in opening statement;

1 that on March the 8th of 1975, after the long period of  
2 incarceration Mr. Creech did provide a written manuscript in his  
3 own handwriting; not only to Bud Mason of the AG's office, but  
4 also to Ken Matthews, reporter for the Statesman in which he  
5 reiterated and made comment.

6 I feel, however, the voluntary statement that was  
7 made on the 8th of November, 1974 is not admissible and should  
8 be suppressed because the statement itself is not reliable in  
9 the manner in which it was taken; according to the testimony  
10 of Officer Woodall and is not reliable because of the  
11 comprehension, or lack of comprehension, that Mr. Creech had  
12 at the time.

13 THE COURT: Mr. Remaklus or Mr. Thomas, whichever.

14 MR. REMAKLUS: Thank you, Your Honor.

15 I think all we have in support of the Motion to  
16 Suppress evidence, there's some self-serving statements of the  
17 defendant that are entirely unsubstantiated and I don't know  
18 what three hits of windowpane, an expression I don't know. We  
19 have no evidence what that means, what it is supposed to do to  
20 a person.

21 What we do have is the testimony of police officers  
22 that were there that have had this defendant under observation  
23 for -- from, what, 1:00 or 2:00 in the morning until that  
24 night. Their evidence is clear that the man was rational,  
25 new what he was doing, had been warned of his rights on a

1 number of occasions, very carefully checked the voluntary  
2 statement that he made, corrected some places where he thought  
3 it was wrong. The corrections that he made I think are very  
4 significant in themselves, Your Honor, as to the number of  
5 times he shot and who was shot first. There is just nothing  
6 -- there's nothing in the record to show that he's entitled to  
7 have this statement suppressed; other than his assertions that  
8 he took some drugs in some unspecified amount and nothing to  
9 substantiate that whatsoever.

10 The evidence clearly shows that he new what he was  
11 doing and responded lucently and clearly to the questions when  
12 he was interrogated by each of these qualified officers.

13 There is just no basis, Your Honor, to suppress  
14 the statements. Thank you.

15 THE COURT: Mr. Robinson, you have a right to reply.

16 MR. ROBINSON: If I may, Your Honor, and with the  
17 Court's permission, I don't believe that I desire to say  
18 any more in relationship to the drug situation that has been  
19 testified to.

20 Certainly, with the Court's permission, if I make  
21 this comment about the two-fold aspect of the Motion to  
22 Suppress that Mr. Remaklus has been able to respond to.

23 I feel that our second area on the motion of  
24 suppression is well covered by briefs that have been submitted  
25 to this Court and the Motions In Limine and that the balance of

1 this voluntary statement that relates to other crimes and  
2 out-of-state involvement and such come within the realm of the  
3 Motions In Limine and the briefs that we have submitted to the  
4 Court.

5 So, in that regard I don't, at this time, make any  
6 strenuous argument since it already has been placed before the  
7 Court.

8 THE COURT: You want to reply to that particular aspect  
9 of the motion, Mr. Remaklus?

10 MR. REMAKLUS: Just a moment, please, Your Honor.

11 Replying only to that portion of the argument  
12 regarding the Motion In Limine, I think striking portions of  
13 this statement, I think these, again, Your Honor, are things  
14 that will have to be ruled upon as proof develops in trial. I  
15 think it's premature at this point to say that statement is not  
16 pertinent or should be stricken. I think, as the trial unfolds,  
17 we'll be determining what's going to be applicable, see what  
18 the evidence is.

19 THE COURT: Well, I'll take up that part of the motion  
20 first.

21 I think I wouldn't make the same ruling for the  
22 same reasons that I did on the Motions In Limine and give  
23 Counsel my initial reaction.

24 My initial reaction is that the objectionable  
25 portion should be excised and taken out of the statement.

1       However, I will leave it open if, in the development of the trial  
2       and at such time that this is offered, I, of course, don't  
3       know that it will be offered, but if at such time as it is  
4       offered in evidence, if it then appears that, for some reason  
5       these prejudicial statements are admissible, then I would rule  
6       on it at that time. But, I want the same admonition on this  
7       ruling that I made in the Motions In Limine; that I don't want  
8       anybody to make any statement in opening statements or otherwise  
9       about this prejudicial matter until I've ruled on it in the  
10      trial, in the presence of the jury. I mean, I don't want --  
11      right now I would still state the same observation, that I  
12      don't see the relevancy or what slight relevance there is as  
13      far as weight by the prejudicial effects of these and my  
14      inclination is to let the statement in with those parts excised,  
15      or stricken from the statement.

16               As far as the other parts of the motion, it has  
17      two prongs; first the way the statement was taken and recorded  
18      by the officers, I think that simply goes to the weight of the  
19      statement and not to its legality or admissibility and I would  
20      deny the Motion to Suppress on that ground.

21               As far as the effect of the -- excuse me, the  
22      defendant's mental condition as far as his ability to  
23      comprehend the rights that were adequately explained to him,  
24      I would find, and his ability to appreciate what he was  
25      stating to the officers, it seems to me, weighing all the



1 evidence and looking at the statement itself, the contents  
2 of the statement and weighing that in the light of the  
3 officers' description of how it was recorded and taken, I must  
4 find that it is voluntary and that Mr. Creech was able to  
5 comprehend at the time he gave this statement.

6 The nature of the rights that was given and also  
7 to what he was doing when he made the statement just seems to  
8 me that his memory of events that are related in the statement  
9 and his lucid recital of those simply by itself almost  
10 controverts his claim that he was completely strung out, or  
11 freaked out when he gave this.

12 So, I'm going to deny the Motion to Suppress on  
13 that ground and make a finding that it is voluntary; that he  
14 was adequately warned of his rights and that he understood  
15 those rights and the statement was voluntary.

16 The question about the accuracy of the statement  
17 in the recording of it, it seems to me are simply matters to  
18 go to the weight to be judged by the trier of the facts and  
19 not matters that render inadmissible or illegal or involuntary.  
20 So, some way we'll have to get some findings and conclusions  
21 on this entered for the record.

22 MR. REMAKLUS: Yes, Your Honor, we shall.

23 MR. ROBINSON: Your Honor, I'd like to have some matters  
24 taken up and, perhaps, if we can do that we can dispense with  
25 a Clerk tomorrow when we have a pretrial conference.

1 THE COURT: Well, I'd like -- are Counsel prepared to  
2 have a pretrial conference right now?

3 I'm not sure what Counsel contemplated doing.  
4 Maybe we need to have a little pretrial conference to see what  
5 you wanted to take up at that pretrial conference, but --

6 MR. ROBINSON: At this point, Your Honor, I had a  
7 couple of motions to make to the Court so that possibly I could  
8 regain control and the aid and assistance of Mr. Creech to aid  
9 in his defense and if I might this will take just a short  
10 period of time.

11 THE COURT: Well, go ahead.

12 MR. ROBINSON: I find, Your Honor, that Dr. A. M. Peterson,  
13 who is the county doctor here in Shoshone County has  
14 manipulated, changed the prescriptions that were made by  
15 Dr. Heyrend to the extent that we are having -- or Tom is  
16 having difficulty in maintaining himself and headaches.

17 We have prescriptions prescribed by Dr. Heyrend who  
18 I'm sure the Court knows was on this case, is the psychiatrist  
19 and has a tremendous amount of background to and including the  
20 Sodium Ametol sessions, hypnotic sessions and such and is well  
21 aware of, not only the physical, but mental aspects of this  
22 case.

23 Dr. Heyrend had prescribed four Talwin daily,  
24 Chloral Hydrate, two at bedtime, Donital four times daily,  
25 the gray capsules, Amobarbital four times daily and Didulota

1 three times daily.

2 In Dr. Heyrend's opinion this has been the amount  
3 of medication that is necessary to hold Tom Creech, not to a  
4 point of mellowness, but to a point of his comprehending, able  
5 to hold himself together and resist these attacks and freaking  
6 out episodes.

7 I find that during the time that he has been  
8 incarcerated in Shoshone County we have had numerous occasions,  
9 the last of which was yesterday morning at approximately  
10 2:00 when he again had to be taken to the hospital and suffered  
11 the mark that he has. He tells me, yes, these were  
12 self-inflicted when Satan himself was taking over.

13 The doctor had confirmed to me that in one of these  
14 head injuries that there are two metallic substances and not  
15 only for that, but also for the duodenal ulcers we would like  
16 to have the Court to have these more thoroughly checked and,  
17 from this head injury Tom advises me that there is some  
18 bleeding running back down through his sinuses; that he is  
19 spitting blood and the blood is running into his throat.

20 For the sake of having his mental condition into  
21 a position where that he might be able to control it and do  
22 something with it, I would appreciate the Court's order that  
23 we return to Dr. Heyrend's prescriptions which, apparently,  
24 were holding everything adequately while we were in Ada County,  
25 while Tom was incarcerated there in Ada County and I found that

1 he was able to cooperate and assist in representation of his  
2 defenses in this case.

3 I have another matter that I -- two other matters,  
4 one being pen, pencil and paper. I have been advised by  
5 Sheriff Gardner that these would be supplied to Mr. Creech in  
6 the attorney-prisoner conference room and I assume that we'll  
7 be able to have those situations more often during this course  
8 of the trial so that Tom will be able to reduce to writing many  
9 of the things that I asked for that we wouldn't have to sit  
10 there personally and take notes on.

11 I have a query to make to the Court regarding the  
12 Court's discovery order. We have spent three full days,  
13 Tuesday, Wednesday and Thursday, in polygraph situations with  
14 Ned Stuart, a former police officer of Kellogg and, in my  
15 estimation, quite expert in the polygraph.

16 He is dictating a cassette tape today that I intend  
17 to reduce to a transcript. Ned Stuart will be flying out  
18 tomorrow morning to spend a full week in Washington, D.C. at  
19 Quantico, Virginia, FBI School, and would not be available and  
20 I'm wondering if this activity on the part of the defense is  
21 included within the discovery order and that a copy of the  
22 written transcription of the polygraph, as soon as it has been  
23 obtained, whether or not that is a portion and part of the  
24 order that should be given -- a copy given to the State?

25 THE COURT: Well, do you want to respond to three

1 aspects -- motions, Mr. Remaklus?

2 Maybe we ought to have Mr. Magnusen respond to a  
3 couple of them.

4 MR. MAGNUSEN: Be glad to, Your Honor.

5 THE COURT: But --

6 MR. THOMAS: With respect to the question that  
7 Mr. Robinson has raised concerning the medication given to the  
8 defendant, it seems to me that the defense counsel is seeking,  
9 in a way, to put the Court in a position of prescription  
10 medication. I think that if there's something wrong with the  
11 medication, or something that happens medically with the  
12 defendant that makes it -- at least raises a question of his  
13 competence to assist at trial, again we should have some  
14 specific showing of that rather than the Court being merely  
15 asked to change medication.

16 I don't think there is such a showing that  
17 Mr. Robinson has made on behalf of the defendant and it strikes  
18 us that the Court cannot act on that request.

19 I believe, with respect to the question of  
20 polygraph tests that our discovery order relates to all reports  
21 and scientific experts and the like and all scientific  
22 investigations and that is the thing that covers a polygraph.  
23 While it may not -- the information may not be admissible, the  
24 State would like to see those reports; when they are available.

25 On that same point, I might make the comment that

1 within the last two days I followed up with Dr. Heyrend to --  
2 concerning the psychiatric investigation that he did pursuant  
3 to the Court's order which was made following the hearing on  
4 September 22nd. Dr. Heyrend did not, at that time, have his  
5 report completed. When it is it will be forwarded to us and  
6 we will, at that time, immediately provide it for the defendant.  
7 I didn't want to make -- did want to make a point on the  
8 record that we don't have it yet. I would have nothing further  
9 than that, Your Honor.

10 THE COURT: How about the pen and pencil?

11 MR. THOMAS: Well, the pen and pencil matter was  
12 covered by the Court's order. We don't have any objection to  
13 Mr. Creech having a pen and pencil and I believe the Court  
14 has already made an order to the effect that a pen and paper  
15 can be checked out to him on a daily basis. The Court's  
16 previous concern was that he not have anything that can be  
17 turned into a weapon and it was felt at the time the Court  
18 considered this before, I believe, that if there were a check  
19 in and check out basis, Mr. Creech would then have the benefit  
20 of the writing instruments and still some jail security could  
21 be maintained.

22 We would not object to that kind of a thing. We  
23 have not done so in the past and I believe that, probably, is  
24 the way it should be handled.

25 THE COURT: Mr. Robinson?

1 MR. ROBINSON: Yes. I only have one comment in regards  
2 to the medication situation, Your Honor.

3 I, least of all, probably, of anyone here in the  
4 courtroom know anything about these prescription drugs and  
5 about the actual physical condition of Tom Creech. I have  
6 left that to the expertise of Dr. Estess, Dr. Heyrend, who  
7 had a long-time contact, examination period and recent  
8 examination period and I'm not asking the Court to change  
9 any prescriptions, other than just to say what Dr. Heyrend,  
10 who seems to have more information than anyone else on  
11 Thomas Eugene Creech medically has prescribed should be the  
12 prescription drugs supplied and furnished to him and on the  
13 basis and at the time of today that they have been prescribed  
14 to hold him level.

15 I don't want to substitute my own lack of medical  
16 expertise. I do advise the Court that in my contacts with  
17 Dr. A. M. Peterson I'm sure that I have not worked up any  
18 particular rapport with the doctor. I tried, on Tuesday, to  
19 talk with the doctor; finding that he had already left, or  
20 had left for North Dakota and wouldn't be back until this  
21 afternoon, or tomorrow. Sometime during the weekend.

22 But, it is my feeling that he has substituted,  
23 totally, his medical opinion for that of Dr. Heyrend's and has  
24 changed the prescriptions to the point that we have had all  
25 of these difficulties. I do assert to the Court that we had



1 none of these difficulties and that Tom was able to assist and  
2 aid me while we were in Ada County in the preparation of his  
3 defense. In the last four to five weeks he has been, for the  
4 most part, out of it.

5 THE COURT: I don't want to get you involved in this,  
6 particularly, Mr. Magnusen, but it does sort of involve some  
7 of the Sheriff's responsibilities here and you are his legal  
8 adviser. I'm sort of informal here. Did you want to shed any  
9 light on these -- the problems? Are they new to you?

10 MR. MAGNUSEN: The medical problem is new to me. I'm  
11 well aware of Sheriff Gardner's consistent standing that he  
12 does not want any writing tools behind the main corridor in  
13 the jail, back into the cell area.

14 It's been my understanding and observation that  
15 Mr. Creech has been allowed these pen and paper and on an  
16 unusually large amount of times in the lawyer's interrogation  
17 room writing. Other prisoners are afforded the same privilege,  
18 but it seems to me that he has been there almost daily as I  
19 come over. I'm not aware of him being offered any opportunities  
20 to write behind the security portion. Perhaps the Deputy can  
21 tell me if he's been writing in the recreation room.

22 VOICE: I don't know about the recreation room myself,  
23 but that is the standing rule; that that which could be formed  
24 into a weapon goes behind the main corridor, that stands for  
25 pens, pencils or anything.



1 MR. MAGNUSEN: I think that Sheriff Gardner is  
2 adamant on this point in view of the experiences he's had with  
3 Mr. Creech.

4 If the Court wants to hear testimony in that  
5 respect I suppose we can bring him in here.

6 THE COURT: Well, if he can go in some other area where  
7 he can have access, why, maybe there's no problem. I don't  
8 care about a rule. I don't care about pens going back behind  
9 some security area either. If Mr. Creech can get out of that  
10 secured area where he can have the pen. I am concerned, at  
11 least in this point, while the trial is going on, that he has  
12 full opportunity to communicate with his counsel.

13 Now, I haven't particularly been concerned about  
14 having a typewriter to write.

15 MR. MAGNUSEN: Your Honor, if I may volunteer a  
16 statement, I think the best facility that the Shoshone County  
17 Safety Building has for that purpose is the attorneys'  
18 interview room. He's got privacy, he's subject to observation  
19 by the police officers, at the same time he's got a writing  
20 desk, he's got seats, he's got comfort.

21 THE COURT: Is there a limitation on him being put into  
22 that area for writing when he --

23 MR. MAGNUSEN: It's been my observation that the  
24 Sheriff will put him in there very frequently so long as it  
25 doesn't restrict the use of the same room by others; which is

1 minimal, really, it's not that frequent.

2 THE COURT: I'm still not going to enter an order that  
3 he has to have a pen back in the cell area if he can be put  
4 in that area where he can write and do the writing he needs to  
5 do to help his counsel during this trial. That's all I'd  
6 require and I would like that done, though.

7 MR. MAGNUSEN: I will so instruct the Sheriff if that  
8 meets the Court's approval.

9 THE COURT: Yes.

10 On the medication, I'm a little concerned about  
11 that. I appreciate that the Sheriff of Shoshone County has  
12 some responsibility in this area and legal responsibility if  
13 something goes wrong with his medication or -- so, I would not  
14 ask the Sheriff to take Mr. Creech's word for medication, or  
15 his attorney or anybody other than a doctor.

16 Now, I -- my feeling would be that, of course, if  
17 a prisoner wants to have his own doctor he probably should  
18 have -- be permitted to have his own doctor and not have to  
19 use the County Doctor. But, I would want it made a matter of  
20 record some way to protect the Sheriff of Shoshone County, who  
21 is the custodial officer, that Mr. Creech's own doctor is  
22 taking over and if anything goes wrong he's the one that has  
23 to answer for it and not the County or the County physician.

24 Now, I'm not sure that -- what Dr. Heyrend has  
25 done in the past has really been made that much of a part of

1 the record; so Dr. Heyrend assumes full responsibility for  
2 this, Mr. Creech's medical situation. If Dr. Heyrend isn't  
3 going to do that, why, I'm not going to replace the County  
4 Doctor because something happens to Mr. Creech, why, the  
5 County is liable to be sued and --

6 MR. MAGNUSEN: Judge, may I -- we've been talking about  
7 two doctors, there's actually a third doctor that's involved  
8 in this. Emergency service that's been rendered to  
9 Mr. Creech has been offered by a doctor by the name of  
10 Nettinger, if I'm not mistaken, I don't know what he's doing  
11 in the way of prescriptions, but he is also attending the  
12 prisoner.

13 MR. ROBINSON: Yes, he made comment yesterday morning  
14 that if Tom dies let him know, he'll come over and announce  
15 him dead.

16 THE COURT: What kind of a record do you have that  
17 Dr. Heyrend has given these prescriptions and is prescribing  
18 for Mr. Creech at the present time?

19 MR. ROBINSON: Each one of these prescriptions are  
20 here in this building, Your Honor, with the prescription and  
21 the method and how often they should be given. This  
22 information was transmitted up here when Tom Creech was  
23 transferred under this Court's order.

24 THE COURT: Is it over Dr. Heyrend's signature so we  
25 have Dr. Heyrend -- or is it just something that somebody has

1 put in some statement or something?

2 MR. ROBINSON: I'm sure that the entire group of  
3 medication is over Dr. Heyrend's signature and I would, for  
4 the record, put it this way: That for any of the medication  
5 that is being supplied to Tom Creech that there is a total  
6 adherence to Dr. Heyrend's opinion, medical opinion, as to  
7 what is needed and what is necessary in order to keep him on  
8 the level position that he can cooperate in his defense. I'm  
9 sure that Mr. Creech will state on the record himself that,  
10 based upon this, he has total confidence in Dr. Heyrend and  
11 would release him under an informed consent that any of this  
12 medication, should the same prove to be harmful in any way,  
13 that there would be absolutely no legal liability, responsibility  
14 against Dr. Heyrend, the County of Shoshone --

15 THE COURT: I'm worried about releasing Shoshone  
16 County, the Sheriff --

17 MR. ROBINSON: And that's specific --

18 THE COURT: I don't want to release Dr. Heyrend, I want  
19 him to be responsible.

20 MR. ROBINSON: All right. Dr. Heyrend, I'm sure -- but  
21 I would implore the Court, possibly to make a direct contact  
22 with Dr. Heyrend so that Dr. Heyrend could give these  
23 representations to the Court himself.

24 THE COURT: I'm not interested in having -- making  
25 representations to me, I want him to make them to the

1 Sheriff and the prescriptions --

2 MR. THOMAS: Your Honor, I think the Court should know  
3 that Dr. Heyrend, who has been described as the defendant's  
4 physician, is appearing in this case as a retained expert for  
5 the State. We're paying him. I just wanted to advise the  
6 Court of that fact, Mr. Robinson.

7 THE COURT: Maybe he has a dual role, a role as a  
8 doctor and a role as a witness. I'm not concerned about his  
9 role as a witness, I'm concerned about his role as a doctor  
10 and physician.

11 MR. THOMAS: We would not like to have it said that we  
12 had, in any way, controlled his medication through our  
13 association.

14 THE COURT: I wouldn't like to have it said either  
15 that you've controlled his medication, particularly to his  
16 detriment.

17 MR. ROBINSON: For the record, Your Honor, we have  
18 total confidence in Dr. Heyrend and in his expertise as a  
19 psychiatrist, as a medical doctor and in the prescriptions  
20 that he has prescribed for Tom Creech and we feel that he has  
21 a greater understanding of the entire problem and that we can  
22 rely upon what he has prescribed in the manner and method of  
23 administering drugs so that all of the cooperation can be  
24 attained that we need.

25 THE COURT: Well, would you check on that, Mr. Magnusen,

1 and see what the Sheriff's position is on that; whether  
2 there's, really, a problem or not?

3 MR. MAGNUSEN: I didn't hear --

4 THE COURT: Would you check on that and see whether  
5 the Sheriff does have any prescriptions that were furnished  
6 by Dr. Heyrend?

7 MR. MAGNUSEN: I will certainly check on that and --

8 THE COURT: Okay.

9 MR. MAGNUSEN: -- see what can be done. The Sheriff,  
10 I'm sure, is not going to make the ultimate decision what  
11 pills he takes.

12 THE COURT: I think a doctor -- but I don't think the  
13 Sheriff, if he has prescriptions from Dr. Heyrend that should  
14 be filled that unless it's --

15 MR. MAGNUSEN: If the Court would take a very brief  
16 recess, I believe the Sheriff is here and perhaps we can  
17 pursue this matter further rather than leave it at a loose end.

18 THE COURT: All right, let's do that and, then, on the  
19 discovery, I was still trying to find the discovery order  
20 for the State. Do you have a date on that?

21 MR. THOMAS: September 8.

22 THE COURT: September 8th?

23 MR. THOMAS: Yes, Your Honor.

24 THE COURT: Well, that order does recite,  
25 Mr. Robinson, the defendant shall permit plaintiff to inspect

1 or copy or photograph any results, reports of physical or  
2 mental examinations and -- of scientific tests, or experiments  
3 made in connection with this case. I would suppose that would  
4 cover polygraph tests also, unless you want to take a position  
5 they aren't scientific tests.

6 MR. ROBINSON: Your Honor, I'm not going to have any  
7 objection, necessarily. I just wanted to clarify on the  
8 record that this was part --

9 THE COURT: I would interpret it as including it.

10 MR. ROBINSON: All right.

11 MR. REMAKLUS: Your Honor, if I might be heard very  
12 briefly with reference to Dr. Heyrend.

13 I think the defendant should have whatever  
14 medicine is best for him, but I don't think that we want to  
15 get in a position of having it argued that this establishes  
16 a doctor-patient relationship between the defendant and  
17 Dr. Heyrend where it would bar his giving of testimony in  
18 this case.

19 MR. ROBINSON: I would hurry, for the record,  
20 Your Honor, and waive any of the doctor-patient privilege.

21 MR. MAGNUSEN: Are we interrupting something?

22 THE COURT: No, just waiting.

23 MR. MAGNUSEN: It's my understanding, from discussing  
24 the matter with the Sheriff that the only medication that  
25 he has for prisoner Creech has been furnished by



1 Dr. A. M. Peterson and Dr. Nettinger of Wallace, Idaho and  
2 that no pharmaceutical prescriptions have been furnished by  
3 any other doctor to the Sheriff for the defendant.

4 SHERIFF GARDNER: There was some pills brought up with --

5 THE COURT: No prescriptions?

6 SHERIFF GARDNER: No prescriptions.

7 THE COURT: Well, I'm not going to require the  
8 Sheriff to give any medication unless he has a doctor's  
9 prescription in his hand that prescribes that. So --

10 MR. ROBINSON: Your Honor, he is receiving this  
11 Talwin.

12 SHERIFF GARDNER: That was Dr. Nettinger.

13 MR. ROBINSON: I will get ahold and have those  
14 prescriptions up here.

15 THE COURT: If Dr. Heyrend wants to send up some  
16 prescriptions, that's fine, but I'm not going to require the  
17 Sheriff --

18 SHERIFF GARDNER: On the run, Judge, a lot of times,  
19 going out here to a druggist, they say I want some pills, I'll  
20 get some pills, but I don't know why he should come back here,  
21 somebody has seen this man, talked to this man, examined  
22 him, prescribed him for it, you bet we'll --

23 THE COURT: Dr. Heyrend has --

24 SHERIFF GARDNER: They say go down and purchase, and  
25 get a handful of pills and go to Kellogg and get another one



1 and none of them have seen the man at all.

2 THE COURT: Well, Dr. Heyrend has, for the record.

3 SHERIFF GARDNER: That part is fine.

4 THE COURT: But I want the Sheriff to have a  
5 prescription from Dr. Heyrend, over his signature and not  
6 just something in the record that says sometime in the past  
7 that Dr. Heyrend has prescribed something for him.

8 MR. ROBINSON: Fine, I'll have those taken care of,  
9 Your Honor.

10 THE COURT: All right.

11 SHERIFF GARDNER: We have asked for prescriptions,  
12 I think, Mr. Robinson, can tell you, and I asked him, we asked  
13 for medical reports, I think Dr. Peterson has asked for  
14 medical reports or something and at the present time no one  
15 has got any.

16 THE COURT: Okay.

17 MR. ROBINSON: Since the record is still being made,  
18 Your Honor, these doctors are all members of the same  
19 association and I have attempted to put them together and  
20 ask that they call each other so that medical history and  
21 records would be available to Dr. Peterson as to the closest  
22 physician to Wallace, Idaho. Why there has been a foul-up  
23 for four or five weeks in getting that particular thing  
24 accomplished, I can't advise the Court.

25 THE COURT: Well, I can't help that.

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MR. ROBINSON: But I will get Dr. Heyrend to prescribe the appropriate medication so we can get this back on an even keel.

THE COURT: All right. We'll take a ten-minute recess at this time, then.

(Whereupon recess was taken and matter concluded.)

1 WALLACE, IDAHO, MONDAY, OCTOBER 6, 1975, 9:30 A.M.

2  
3  
4 THE COURT: This is the time scheduled for the trial  
5 in the case of the State of Idaho versus Thomas Eugene Creech.

6 Is the State ready to proceed?

7 MR. REMAKLUS: The State is ready, Your Honor.

8 THE COURT: Defendant ready?

9 MR. ROBINSON: Yes, Your Honor.

10 THE COURT: All right, the Clerk will first call the  
11 roll of the jury panel. If you will answer as your names  
12 are called, please, ladies and gentlemen.

13 (Whereupon the jury panel roll call was had.)

14 THE COURT: Are there any jurors on the panel that  
15 have not answered the roll call?

16 VOICE: Yes.

17 THE COURT: What's your name, please.

18 VOICE: Maynard Stoumbaugh.

19 THE COURT: Is it "Richard Stoumbaugh"?

20 MR. STOUMBAUGH: No, it's "Maynard".

21 THE COURT: Did you fill out a regular juror  
22 questionnaire and a qualification form?

23 MR. STOUMBAUGH: Yes.

24 THE COURT: And sent it all in?

25 MR. STOUMBAUGH: Yes.

1 THE COURT: All right, I'll show that Mr. Stoumbaugh  
2 is present, then.

3 Anyone else here on the jury panel who hasn't  
4 answered the roll call?

5 All right, apparently, then, the following  
6 members of the panel are not present. Glen H. Wright,  
7 apparently, is the only one absent, then?

8 Mr. Bailiff, if you'd -- or, Mr. Jury Commissioner,  
9 if you'd check on Mr. Wright, if he hasn't been excused, have  
10 him brought before the Court, please.

11 VOICE: He's my father and I think he left on  
12 vacation just before the summonses were mailed out.

13 THE COURT: Okay. All right, then, well, if he wasn't  
14 summoned we'll excuse him.

15 Ladies and gentlemen of the jury panel, if you  
16 will now rise, please, and raise your right hands, the  
17 Clerk will swear you to answer the questions touching upon  
18 your qualifications as jurors in this case.

19 (Whereupon the entire jury panel was sworn for  
20 voir dire examination.)

21 THE COURT: All right, be seated.

22 I'm going to go over a few matters with you,  
23 preliminary matters, ladies and gentlemen of the jury panel.

24 I want to make sure you can all hear me now. If  
25 there's anyone who can't hear me, let me know.

1 VOICE: I can't hear.  
2 THE COURT: You can't hear me?  
3 VOICE: Not very good.  
4 THE COURT: Could you hear me better if you were up a  
5 little closer?  
6 VOICE: I'm just hard of hearing.  
7 THE COURT: Are you hard of hearing?  
8 VOICE: Um-hmm.  
9 THE COURT: You can't hear me?  
10 VOICE: I can hear you but I can't hear what you are  
11 talking about.  
12 THE COURT: Would you hear better if you could come up  
13 closer -- do you have a hearing problem?  
14 VOICE: I have a hearing aid ordered.  
15 THE COURT: Perhaps if both of you gentlemen could talk  
16 to the Jury Commissioner when we take our first recess, if your  
17 hearing is bad enough we might need to excuse you for that  
18 reason.  
19 All right, we have scheduled for trial today the  
20 case of State of Idaho versus Thomas Eugene Creech. Mr. Creech  
21 is charged with two counts of Murder in the First Degree.  
22 It's alleged that Mr. Creech caused the deaths of  
23 Thomas Edward Arnold and John Wayne Bradford on or about the  
24 4th day of November, 1974 in Valley County, Idaho.  
25 The case has been transferred from Valley County to

1 Shoshone County for trial. At this time I want to introduce  
2 the Court's personnel and other participants in the trial so  
3 that, for purposes of answering your questions on voir dire  
4 you might be better informed.

5 The State of Idaho is represented by  
6 Mr. Robert Remaklus, Prosecuting Attorney of Valley County, and  
7 Mr. Lynn Thomas, Assistant Attorney General of the State of  
8 Idaho.

9 The defendant is represented by Mr. Bruce Robinson  
10 of Nampa, Idaho.

11 Mr. Creech, the defendant, is seated next to  
12 Mr. Robinson.

13 I'm Judge Durtschi, the Clerk is Mrs. Lindley,  
14 she's the one that called the roll so you all know her. The  
15 Reporter is Mr. John Gambee, the Bailiffs who will be working  
16 with you during the trial are Mr. and Mrs. Ralph Armbruster,  
17 Mr. Armbruster, if you'd stand and Mrs. Joice Dumont,  
18 Mrs. Dumont, if you'd stand, and Mr. Al Falsetto.

19 The Jury Commissioner is Mr. Farley.

20 The Statutes of the State of Idaho establish  
21 certain qualifications for trial jurors and fix certain grounds  
22 of disqualification.

23 As the first step in the trial those members of  
24 the panel whose names are drawn will be asked certain questions  
25 by the Court and Counsel to test your qualifications to sit as

1 trial jurors.

2 Now, it will not be our purpose to embarrass you  
3 in any way, but it is essential that we test your qualifications  
4 to sit as fair and impartial jurors in this case.

5 Under our Statutes attorneys are permitted to  
6 exercise two types of challenges to jurors. If statutory  
7 grounds for disqualification are shown as to any juror an  
8 attorney may exercise what we call a "challenge for cause" as  
9 to that juror.

10 Now, there is no limit to the number of jurors who  
11 may be challenged for cause.

12 After 12 jurors have been accepted, or passed for  
13 cause, the attorneys are permitted to exercise what we call  
14 "pre-emptory challenges".

15 Now, pre-emptory challenges are exercised by the  
16 attorney simply writing the name of the juror they want to  
17 excuse on a slip of paper and showing it to the other attorney  
18 and handing it to the Court. No cause need be shown for  
19 excusing a juror on pre-emptory challenges. However, in a  
20 murder case each side is limited as to the number of  
21 pre-emptory challenges they may exercise; each side is allowed  
22 ten pre-emptory challenges.

23 Since this trial is likely to be a protracted one,  
24 after the 12 jurors have been selected, we will select two  
25 alternate jurors who will be available to take the place of any

1 juror who may become ill or have to be excused during the trial  
2 for some other reason.

3 The alternate jurors are picked in the same way as  
4 the trial jurors, except that each side is limited to two  
5 pre-emptory challenges to the alternate jurors.

6 If any of you have served on juries before you will  
7 find the procedure a bit different in one respect in this  
8 trial. Ordinarily we seat 12 prospective jurors in the box  
9 here and they are then examined for cause in the presence of  
10 other chosen and prospective jurors.

11 In this case, however, I've determined that the  
12 examination of each juror shall take place outside the presence  
13 of other chosen prospective jurors. In order to facilitate  
14 this we'll use the following procedure: After the Clerk draws  
15 the first 12 names, the Court is going to adjourn to the  
16 Public Safety Building across the street with the Court personnel  
17 and those 12 prospective jurors where they will be individually  
18 examined.

19 All of the remainder of the panel will remain in  
20 this courtroom, or in the immediate vicinity. As we need  
21 additional jurors the Clerk will draw additional names and we  
22 will send the Bailiff over here with the names of the additional  
23 jurors as we need you.

24 While those jurors remaining here in this courtroom  
25 will be free to move about, if you wish, you will have to



1 remain in or near the courtroom so that you can be called as  
2 we need you.

3 Before we proceed with the picking of the jury I  
4 need to take up one additional important matter with the entire  
5 panel and I would ask you particularly to pay attention to this.

6 Once the trial jury is actually chosen and sworn to  
7 try the case it will be sequestered during all recesses to  
8 protect against outside influence. However, this will not be  
9 done until the jury is chosen. This means that while we are  
10 picking the jury you will be able to leave during noon and  
11 evening recesses and you'll, therefore, be open to outside  
12 influence during these times.

13 Therefore, I'm going to give you an admonition which  
14 I ask that you please abide by during the entire time that you  
15 are subject to being chosen as a juror in this case.

16 Number one, please do not discuss this case among  
17 yourselves or with anyone else.

18 Number two, do not allow anyone to approach you and  
19 discuss the case with you. If anyone attempts to do this,  
20 endeavor to get the person's name and report the matter  
21 immediately to one of the Bailiffs during these recesses.

22 There may appear in the newspapers or on radio or  
23 television, reports concerning this case and you may be tempted  
24 to read, listen to or watch them. Please do not do so. Due  
25 process of law requires that the evidence to be considered by

1 you in reaching your verdict meet certain standards. For  
2 example, a witness may testify about events he himself has seen  
3 or heard but not about matters of which he was told by others.

4 Also witnesses must be sworn to tell the truth and  
5 must be subject to cross-examination. News reports about the  
6 case are not subject to these standards and if you read, listen  
7 to or watch these reports you may be exposing yourself to  
8 misleading or inaccurate information which unduly favors one  
9 side and to which the other side is unable to respond.

10 In fairness to both sides, therefore, it is  
11 essential that you comply with this instruction.

12 As I've already told you, those whose names are  
13 drawn will be examined out of the presence of the other jurors.  
14 I ask you not to discuss the matters about what you are  
15 examined with the other jurors or prospective jurors.

16 I'm required by law to advise the defendant that  
17 if he wishes to challenge any individual juror, he must do so  
18 before the jury is sworn to try the cause.

19 MR. ROBINSON: Yes, Your Honor.

20 THE COURT: The Clerk will now draw 12 names from the  
21 jury box, if you will pay attention as your names are drawn  
22 because these 12 are going to have to go across the street with  
23 us to the Public Safety Building. You can just remain where  
24 you are, if you just pay attention to your name so when we  
25 move over to the other building you can go with us.

1 (Whereupon the names of 12 prospective jurors were  
2 drawn from the jury box.)

3 THE COURT: All right, we'll now adjourn to the  
4 Public Safety Building with those 12 jurors. The rest of the  
5 jurors may stand in recess and I will again remind you to  
6 please abide by the admonition I gave you about discussing the  
7 case, not to discuss the case among yourselves.

8 (Recess taken and following proceedings occurring  
9 at the Public Safety Building, Wallace, Idaho, 10:05 a.m.)

10 THE COURT: Counsel ready to proceed?

11 MR. ROBINSON: Your Honor, I have three very short  
12 preliminary matters I'd like to make a matter of record at  
13 this time.

14 THE COURT: Very well.

15 MR. ROBINSON: May I approach the Clerk, Your Honor?

16 THE COURT: Yes. Let the record show that this is in  
17 the absence of the jury; that there isn't any jurors present.  
18 I don't think this is a trial exhibit; is it?

19 MR. ROBINSON: No, it isn't, Your Honor, mainly for the  
20 purpose of informing the Court as to publications.

21 THE COURT: Let's give this a continued marking, mark  
22 this C, I think it is.

23 MR. ROBINSON: This would be E, I think we had A, B, C  
24 and D.

25 (Defendant's Exhibit E marked for identification.)

1 MR. ROBINSON: Your Honor, I represent to the Court  
2 that this is a publication dated October 3rd, last Friday, of  
3 the North Idaho Press, Wallace, Idaho, Friday, October 3, 1975,  
4 which does, on the inside of the front page, give an account  
5 of the "Creech Murder Trial Starts Monday", carrying information  
6 regarding the extraneous circumstances outside of the facts of  
7 the two involvements in the State of Idaho and also comments --  
8 comments about things outside the State and I submit that for  
9 the record at this time.

10 MR. REMAKLUS: We have no objection.

11 THE COURT: All right, it will be admitted for the record.

12 (Defendant's Exhibit E admitted into evidence.)

13 MR. ROBINSON: I'd like to add to that, comment for the  
14 record, Your Honor. I have caused a survey to be made and I  
15 find that yesterday's Boise Statesman carried an extensive  
16 front-page article regarding the commencement of this trial on  
17 Saturday afternoon. The Nampa Free Press, the Caldwell Tribune  
18 had extensive coverage and an article appeared in the Spokesman  
19 Review yesterday's paper, Sunday, October the 5th, 1975. This  
20 is for the Court's information in the purpose of examining on  
21 voir dire.

22 The second matter that I have to make a matter of  
23 record, Your Honor, is, at this time I am submitting copies of  
24 the polygraph report that we discussed in pretrial to  
25 Mr. Thomas, to Mr. Remaklus, and a copy to the Court.

1 I represent to the Court that although this does  
2 not have the signature on it of the polygraph operator, I do  
3 have in my possession the handwritten polygraph report that  
4 was signed by Mr. Ned Stuart.

5 The third matter, Your Honor, my sightless  
6 investigator, Mr. John Wickersham, with the Court's permission,  
7 if there's no objection from the State, I would ask permission  
8 for him to sit against the far wall, over here (indicating)  
9 during these proceedings.

10 He has been of immeasurable assistance to me in  
11 the investigation of the case and I do desire his continued  
12 counseling.

13 THE COURT: Do you have any objection?

14 MR. REMAKLUS: That's fine.

15 THE COURT: That's fine, then.

16 MR. ROBINSON: May I ask Sheriff Lynskey, if you would  
17 tell Mr. Wickersham to come on in, then, with the Court's  
18 permission.

19 THE COURT: Where is he?

20 MR. ROBINSON: Just out in the hall. I'm sure he has  
21 a guide dog with him, Sheriff Lynskey.

22 THE COURT: Why don't you go ahead and tell him,  
23 Mr. Robinson.

24 MR. ROBINSON: Thank you very much.

25 (Brief delay.)

1 THE COURT: Any other preliminary matters to come before  
2 the Court?

3 MR. REMAKLUS: We may call Sheriff Lynskey as a witness.  
4 In that event, should he be excused or may he stay in here  
5 during the selection of the jury?

6 MR. ROBINSON: I have no objection to his remaining.

7 THE COURT: The selection of the jury is done in open  
8 court, unless you are going to move to exclude witnesses. If  
9 you are, why --

10 MR. REMAKLUS: We're not going to, I just --

11 MR. ROBINSON: I am not, Your Honor.

12 THE COURT: Well, as far as I'm concerned, then,  
13 witnesses can remain.

14 MR. REMAKLUS: Thank you.

15 THE COURT: As I understand, Madam Clerk, Yvonne Helm  
16 is the first juror, number one; is that correct?

17 THE CLERK: That is right.

18 THE COURT: We need Juror No. 1.

19 MR. REMAKLUS: What number is she, Judge?

20 THE COURT: Forty-two.  
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YVONNE A. HELM,  
a prospective juror herein, having been first duly sworn, took  
the stand and testified as follows:

VOIR DIRE EXAMINATION

BY THE COURT:

Q. You are Mrs. Yvonne Helm; is that correct?

A. Yes.

Q. The Court Reporter, Mrs. Helm, is going to have to  
write down your answers so you will need to answer audibly  
when we ask you questions. He can't report a nod of the head,  
so, if you do that, we'd appreciate it.

A. Okay.

Q. I'm going to ask you a few questions here first,  
Mrs. Helm, and then the attorneys will have a chance to ask  
you some questions and all this is sort of -- probably sort  
of nervous, but we'll ask you to relax.

I want to first advise you, Mrs. Helm, that this  
trial may last up to three weeks after the jury is chosen and  
sworn. It will be sequestered; which means that the jurors  
will have to eat together and be housed in a motel and won't  
be able to go home during recesses for the duration of the  
trial.

I'm wondering whether there's anything in your  
personal life, your home situation, any work you might be

1 involved in that would make it impossible for you to do this  
2 or create an extreme hardship for you or your family?

3 A. Yes, it would.

4 Q. What is the problem? Can you tell us about that?

5 A. Well, I'm pregnant and it's due the end of  
6 November.

7 Q. I see.

8 A. And I could go in any time.

9 Q. You could go in any time and you are seeing a  
10 doctor regularly; are you?

11 A. Yes, I am.

12 THE COURT: Counsel have any objection to excusing  
13 Mrs. Helm?

14 MR. REMAKLUS: No, I think she should be.

15 MR. ROBINSON: No objection.

16 THE COURT: All right, Mrs. Helm, you will be excused.  
17 We appreciate your appearance here this morning. We don't  
18 have a new appearance date for the jurors. You will be  
19 contacted by the Jury Commissioner when you have to appear  
20 again.

21 You will still be on call with the Jury Commissioner.  
22 He will call you when you need to appear again. All I'd ask  
23 you to do is simply not discuss the questioning with any of  
24 the other panel members. In fact, you can go home now if you  
25 want.



1 THE WITNESS: Okay.

2 THE COURT: Thank you for your appearance.

3 Counsel have any objection if we just take the  
4 jurors in the order in which they were drawn?

5 MR. REMAKLUS: No, I think that's fine, Your Honor.

6 THE COURT: All right, the next will be  
7 Mrs. Gregory, number 33.

8

9 VIRGINIA M. GREGORY,  
10 a prospective juror herein, having been first duly sworn, took  
11 the stand and testified as follows:

12

13 VOIR DIRE EXAMINATION

14 BY THE COURT:

15 Q Mrs. Gregory, if you'd just have a seat there,  
16 please.

17 You are Mrs. Virginia Gregory?

18 A Yes, sir.

19 Q I'm going to ask you a few questions, first,  
20 Mrs. Gregory, and then the attorneys want to ask you a few also.

21 I want to first advise you that this trial may last  
22 up to three weeks after the jury is chosen and sworn to try the  
23 case. It will be sequestered; which means that you won't be  
24 able to go home during recesses or the evening recesses. You  
25 will eat together and be housed in a motel during the duration

1 of the trial.

2 I'm wondering right at the outset if there's anything  
3 in your personal life or home situation or any work you are  
4 doing that will make it impossible for you to accommodate to  
5 this arrangement?

6 A. No, sir, I could accommodate.

7 Q. You could do that?

8 A. Yes.

9 Q. Fine. Under our law, Mrs. Gregory, a defendant  
10 in the criminal action is presumed to be innocent until his  
11 guilt is established beyond a reasonable doubt. Now, this  
12 principle of law means that at this stage of the proceeding  
13 Mr. Creech must be considered to be innocent.

14 Are you able at this time to give Mr. Creech the  
15 benefit of this principle and consider him to be innocent?

16 A. Yes, sir, I am. I know nothing about Mr. Creech.

17 Q. That was my next question, Mrs. Gregory. Have you  
18 read or heard anything about this case in the newspapers or  
19 on radio or TV or from any other source?

20 A. I did read a small article saying that the trial  
21 was to be held and that is the extent of my knowledge of the  
22 case.

23 Q. Is that just one article?

24 A. Yes, sir, it was in the Kellogg Evening News;  
25 saying that the trial would begin on this date and that was --

1 Q Can you tell me approximately when that was?

2 A Well --

3 Q I don't need the exact date. Was it within the  
4 last week?

5 A I imagine two weeks ago, some such as that.

6 Q I would like you to test your memory the best you  
7 can, Mrs. Gregory, and tell me just what facts you actually  
8 carried in your memory right now from the story.

9 A Well, the reason that I even saw the story was  
10 the fact that I had gone -- been called as a juror on that  
11 date and I remember thinking to myself "If I'm called as a  
12 juror I want to know nothing much about this". I really only  
13 scanned the article in that if I could just remember now --  
14 I remember the man's name and I've actually -- I remember very  
15 little else about the article. It was a very short article  
16 anyway, with very little facts in it.

17 Q Have you formed any opinion as to the guilt or  
18 innocence of the defendant, based on that article?

19 A No, sir, I have not.

20 Q I want to get into another matter, then,  
21 Mrs. Gregory.

22 Under our Idaho law, neither the jury nor the  
23 Court has any discretion as to the penalty to be imposed for  
24 first degree murder. The law makes the death penalty mandatory.  
25 Now, knowing this to be the law, do you have any personal

1 beliefs or feelings about the death penalty which would prevent  
2 you from fairly considering the evidence and law bearing upon  
3 the charge of First Degree Murder?

4 A. No, I have not.

5 Q. Do you know of anything that would prevent you from  
6 following my instructions on the law in this case?

7 A. No.

8 Q. Understanding that the jurors are the judges of  
9 facts and the Court is the judge of the law --

10 A. Yes, sir, I understand that.

11 Q. -- do you know of anything that would prevent you  
12 from being a fair and impartial juror to both sides in this  
13 case?

14 A. No, sir, I know nothing about it.

15 THE COURT: All right. Counsel may examine.

16  
17 VOIR DIRE EXAMINATION

18 BY MR. REMAKLUS:

19 Q. Thank you, Your Honor.

20 Mrs. Gregory, I see you've been a life-long  
21 resident of this area; is that correct?

22 A. Yes, that's correct.

23 Q. And you are a secretary over in Bunker Hill?

24 A. That's correct.

25 Q. What kind of duties do you have over there?

1           A.    I am secretary to the Controller's Department and  
2 the Cost Accounting and Corporate Accounting and the  
3 Treasurer.

4           Q.    Um-hmm.

5           A.    I work closely with the Treasurer. In fact, he's  
6 my immediate supervisor.

7           Q.    And how long have you been so employed?

8           A.    Nineteen years.

9           Q.    Um-hmm. Now, I probably would have a lot of  
10 questions to ask you, Mrs. Gregory, and Valley County does  
11 not have money to hire investigators so, if you and I are to  
12 be somewhat acquainted, it's going to have to be during this  
13 process and please don't feel offended by anything that I  
14 might ask you.

15                   What's your educational background?

16           A.    Through high school and night schools.

17           Q.    And what kind of courses did you take in night  
18 school?

19           A.    Mostly secretarial.

20           Q.    Um-hmm. Well, apparently you've been there 19  
21 years, you must be good at your work. Do you like your work  
22 there?

23           A.    I like it very much, yes.

24           Q.    What -- do you have any children?

25           A.    No, I have none.

1 Q. You are married, though, aren't you?  
2 A. Yes, I am married.  
3 Q. And Mr. Gregory works there at Bunker Hill also?  
4 A. Yes, sir. He works as a mechanic.  
5 Q. He has a skilled occupation, then, too, doesn't he?  
6 A. Yes.  
7 Q. What do you folks do for your hobbies, Mrs. Gregory?  
8 A. Well, we have a home on -- or summer home on  
9 Lake Coeur d'Alene and a boat and that's what we enjoy doing  
10 mostly. I like to do other women things as sewing and that  
11 sort of thing.  
12 Q. Um-hmm. What kind of reading do you folks do?  
13 A. I read very prolifically. I read every kind of  
14 book, several books a month.  
15 Q. Um-hmm. All kinds?  
16 A. All kinds of books.  
17 Q. You buy paperbacks?  
18 A. I buy everything.  
19 Q. So do I. Are you in -- do you read, of course,  
20 your reading, then, probably touches on just about all aspects  
21 of life; wouldn't it?  
22 A. Yes, sir, I would say so.  
23 Q. Um-hmm. Are you active in a church?  
24 A. Yes, I'm a Roman Catholic.  
25 Q. Do you attend regularly?

1           A.     Yes, I do.

2           Q     Now, the Judge asked you some questions about --  
3     regarding the death penalty and, as His Honor stated, the law  
4     says what the penalty is and none of us, really, have anything  
5     to say about that; it's already established.

6                 Now, the Judge also advised you that it's the  
7     burden of the State to prove guilt beyond a reasonable doubt.  
8     Now, this is a very high burden, serious burden, that's put  
9     upon us. But, if we meet that burden, which we expect to do,  
10    do you feel that you can set aside anything -- any thoughts  
11    you have about the penalty and return a guilty verdict, or  
12    return your verdict simply based on the evidence?

13          A.     Yes. Yes, I believe I can. I believe strongly  
14    that if we do not have law we have anarchy and I believe that  
15    each person has his duty, under the law, and since this law  
16    is set, then I would have no compunction. It would not be  
17    something that -- I said had to be done, it has already been  
18    a law that has been set, I would have no compunction of going  
19    with whatever that decision was.

20          Q     Do you happen to know Mr. Robinson, the defense  
21    attorney?

22          A.     No, I do not.

23          Q     We are all strangers to you, then?

24          A.     Yes, sir.

25          Q     With exception of our Clerk?

1           A.    I have not met her either that I know of.

2           Q.    Um-hmm.  You, in your work, do you have a great  
3 deal of authority in your job?

4           A.    No, not authority as such over people, is that  
5 your question?

6           Q.    Not over other people as much as making decisions  
7 as to the expenditure of money and things of that nature?

8           A.    No, sir, I do not.  Although I do have the  
9 decision of buying most of the office supplies for our  
10 immediate office.

11          Q.    Yes.

12          A.    And I do make those decisions as to the expenditures  
13 that are made there and no one questions that.

14          Q.    And how many people are there in the office,  
15 Mrs. Gregory?

16          A.    Let's see, four, five -- there are nine of us in  
17 this one immediate office.

18          Q.    Yes.  So, in that regard, then, you are sort of  
19 the boss, then?

20          A.    In a way.

21          Q.    Yes, um-hmm.

22          A.    I still have supervision, I can only do a certain  
23 amount, but I'm usually given free rein in that area.

24          Q.    Yes.  You don't feel that there's anything in your  
25 religious background, then, that would prevent you from being



1 totally objective in arriving at a decision?

2 A No, my knowledge, I know of nothing. I believe  
3 the decision would be mine.

4 MR. REMAKLUS: Yes. I think we'll pass the juror for  
5 cause, Your Honor.

6 MR. ROBINSON: May I proceed, Your Honor?

7 THE COURT: Yes.

8

9 VOIR DIRE EXAMINATION

10 BY MR. ROBINSON:

11 Q Mrs. Gregory, I'd like to have you understand at  
12 the outset that this certainly is not the duty of any of us  
13 here asking these questions to pry into your private life.  
14 You do understand, do you not, that we have a duty owed as  
15 officers of the court to examine you about your thoughts, your  
16 opinions in order to select an unbiased, unprejudiced jury?

17 A I understand and I appreciate the fact that you  
18 do have this duty.

19 Q All right. Then, Mrs. Gregory, you did mention  
20 your church going and what is that affiliation?

21 A Catholic.

22 Q All right. And I take it from that affiliation,  
23 then, you do believe in God?

24 A I do.

25 Q And do you also believe that there is a Satan?

1 A. That there is a Satan?

2 Q. Yes.

3 A. I'm very sure that there is, sir.

4 Q. All right. Now, Mrs. Gregory, in your previous  
5 answers to questions given to you by His Honor and  
6 Mr. Remaklus, you indicated that you knew nothing about the  
7 facts of this case, save and except for a short newspaper  
8 article the Kellogg paper that you read something in about  
9 two weeks ago; is that correct?

10 A. Yes, that is correct.

11 Q. All right. And over the period of the last year,  
12 what newspapers do you subscribe to?

13 A. The Spokane Review and the Kellogg Evening News.

14 Q. And only those two?

15 A. Just those two. I do have, at the office, we get  
16 the other Spokane paper which I read.

17 Q. That's the Daily Chronicle?

18 A. Yes.

19 Q. And there at the Bunker Hill -- don't they also  
20 have the Boise Statesman and the other newspapers that come  
21 in there?

22 A. I believe they do. However, they go into a  
23 different department from mine and I never see them. They are  
24 routed through the company mail into different departments and  
25 to different mails. Our mail is just segregated and I never

1 see those papers.

2 Q And what periodicals, weekly magazines, do you  
3 subscribe to?

4 A Well, I subscribe mostly to women's magazines.  
5 My sister subscribes to Time; which I see once in awhile. Those  
6 are the only magazines that we have.

7 Q Did you ever see any article in that Time magazine  
8 that referred to this case?

9 A No, I never did.

10 Q And in the other publications that you mentioned  
11 over the past year, is it your testimony here that -- in  
12 answering these questions, that you had not been made aware  
13 of any of the facts of this case from any of those newspapers  
14 or periodicals?

15 A No, sir, to my knowledge I have -- I just don't  
16 remember ever having read about it.

17 Q All right. Have you --

18 A I have --

19 Q -- have you discussed this case with any friend  
20 or relative?

21 A No, I have not.

22 Q Do you know, Mrs. Gregory, whether or not the  
23 John Birch Society has its chapter here in Silver Valley?

24 A I am not aware if they have. I'm not familiar  
25 too much with the John Birch Society and I'm not aware if

1       there is a chapter of it here.

2               Q     All right. Now, Mrs. Gregory, our investigation  
3 here in the Silver Valley, Shoshone County area, indicates  
4 that over the past two, two and a half years there have been  
5 rumors regarding practicing witchcraft in this area. Have  
6 you heard or discussed any of this matter?

7               A     I've heard vaguely about it and I believe it has  
8 been discussed.

9               Q     Would you tell us specifically what you do recall  
10 that has been discussed and with whom and how long ago?

11              A     I'm trying -- I hope I'm not taking too much of  
12 your time and I'm trying to think so I can answer you.

13              Q     Please take your time and remain calm.

14              A     As I recall, it's been quite awhile ago and I  
15 heard in the office, I believe it was in the office, that  
16 people were talking, just a visiting sort of conversation  
17 of something of this sort in our Rathdrum area and not being  
18 too familiar with Rathdrum, I've been through there many  
19 times, but I don't live near there or anything.

20                    I really couldn't even place where they were  
21 talking about or what they were talking about, actually. But,  
22 I do know there was something, there was some visitation of  
23 girls and men talking about it and I believe it was about the  
24 time that a young couple in that area had disappeared.

25              Q     The Marcusins?

1           A.     I believe that was the name and I believe that  
2     was the context of the conversation but, to my knowledge,  
3     that's all that I've -- that I know of it.

4           Q.     All right. And your being a person of the  
5     Catholic faith, has there been, in the last six months to a  
6     year, some confrontation of the Catholic organization here  
7     in Silver Valley having to do with dissatisfaction of the  
8     Doctrines of the Catholic Church?

9           A.     Well, I believe -- did you ask a specific time?

10          Q.     Between -- in the last six months to a year, or  
11     in the last year.

12          A.     Well, may I say that over the last period of  
13     five to seven years the old Catholic-type Catholic -- well,  
14     such as I am, who was born into the church when it went all  
15     the way through in the Latin. Then, suddenly they switched it  
16     to the English and it was a little difficult for us to become  
17     used to this and --

18          Q.     Excuse me for interrupting, Mrs. Gregory, but  
19     perhaps I didn't make my question clear.

20                 I was not specifically referring to anything  
21     internal in the church but rather whether or not there was  
22     anything in the Catholic Church Doctrine that has been a  
23     confrontation and source of argument with other churches in  
24     the Silver Valley area?

25          A.     I can't think of anything immediate, or within the

1 last year that we don't -- to answer your question, I don't  
2 believe so, not that I know.

3 Q All right. Now, Mrs. Gregory, does the fact that  
4 Mr. Thomas Eugene Creech, the gentleman sitting here beside me,  
5 comes into the courtroom in handcuffs and that have --

6 THE COURT: I want the record to show that Mr. Creech  
7 is not in handcuffs.

8 MR. ROBINSON: Yes, Your Honor.

9 THE COURT: And I want the record to show that he hasn't  
10 appeared in court in handcuffs, that's Counsel's statement  
11 and not the record.

12 MR. ROBINSON: May I clear the record, Your Honor.  
13 When we were in the large courtroom Mr. Creech was escorted  
14 into the large courtroom.

15 THE COURT: I didn't see that.

16 MR. ROBINSON: No, just before Your Honor came into  
17 court and he was brought into the courtroom in cuffs and  
18 uncuffed after he was at counsel table.

19 So, I didn't mean to cause an affront to the  
20 Court.

21 THE COURT: It's not an affront, I just want the record  
22 to reflect that Mr. Creech is not restrained in any manner  
23 at this time.

24 MR. ROBINSON: Yes, that's correct, Your Honor. But  
25 this was exhibited to the entire jury panel this morning.

1 THE COURT: I don't know that as a matter of record,  
2 Mr. Robinson.

3 MR. ROBINSON: May I go ahead and proceed?

4 THE COURT: Yes.

5 Q BY MR. ROBINSON: Does the fact, Mrs. Gregory,  
6 that Mr. Creech is incarcerated and that he will, during the  
7 course of this trial, be supervised by the police officers and  
8 taken into a holding room during recesses, raise any  
9 presumption in your mind that Mr. Creech must be guilty of  
10 the charges that are against him?

11 A No, sir, none whatsoever.

12 Q Does it raise any presumption in your mind that  
13 he is a dangerous person because he is under this close  
14 supervision?

15 A Not necessarily, no.

16 Q And His Honor has asked you those questions  
17 regarding the presumption of innocence until proven guilty  
18 beyond a reasonable doubt.

19 Now, do you feel that that is a strong maxim of  
20 law in our American system?

21 A Yes, sir. I feel it's an absolutely necessary  
22 one.

23 Q Now, Mrs. Gregory, in this trial there will be  
24 testimony that borders on the crude, profane. Will the fact  
25 that this testimony involved in the circumstances of this

1 case, will that tend to cause you prejudice towards the  
2 defendant, Mr. Creech?

3 A. No, no, it will not.

4 Q. Will you be able to hear that kind of testimony  
5 and take it in the context in which it occurred and not be  
6 embarrassed by it and somewhat remain aloof from the crudeness  
7 and hold yourself unbiased and unprejudiced merely because that  
8 is a part of the testimony?

9 A. I believe that if there is this sort of thing  
10 it should be brought out. I think that the only way that you  
11 can judge is by hearing everything, knowing everything pro and  
12 con and to judge fairly. You have to know, if you are -- if  
13 you don't know everything you cannot judge properly and, yes,  
14 to answer your question, yes, I believe I will, I could.

15 Q. And does the mere fact that a person is charged  
16 with a crime raise any presumptions in your mind?

17 A. None whatsoever.

18 Q. Since you, Mrs. Gregory, know yourself better  
19 than anyone here in the courtroom and from what the Court has  
20 told you and from the questions that you've been asked, you do  
21 know that this is a serious capital offense that is charged;  
22 do you not?

23 A. I understand that.

24 Q. And do you know of anything in your make-up,  
25 in your mental attitude, in your organizations, in your



1 friendships that would prevent you from -- if you find the  
2 facts in this case as presented in court that the defendant,  
3 Mr. Creech, is not guilty of this -- these two murders, would  
4 you feel embarrassed in any way in bringing in a verdict of  
5 not guilty?

6 A. If that was my true conviction, I would feel  
7 absolutely no embarrassment. I would feel no embarrassment  
8 bringing a verdict of guilty or any embarrassment for not  
9 guilty; depending upon my own true conviction.

10 Q. And do you know of any reason, whether I've  
11 asked you or not, Mrs. Gregory, why you should not be selected  
12 as a juror to hear this case?

13 A. I know of no reason why not.

14 Q. And if this is a protracted trial that may last  
15 from three to six weeks or eight weeks, you would not feel it  
16 would be a hardship on your life to be sequestered and away  
17 from your home and family for that period of time?

18 A. I don't believe it would be really easy, but I  
19 believe, I truly believe in justice and I believe if I were  
20 chosen for this jury that that would be my duty and I am free  
21 to do this if this is the case.

22 MR. ROBINSON: Your Honor, we pass Mrs. Gregory for  
23 cause.

24 THE COURT: Mrs. Gregory, I'm going to ask you to  
25 step back into the jury room and please abide by the

1 admonition I gave, don't discuss this questioning with the  
2 other prospective jurors.

3 THE WITNESS: Yes, sir. May I ask, am I chosen for  
4 the jury or will I know this later?

5 THE COURT: You'll know later. As I explained, we  
6 have to go through -- find 12 that are passed for cause and  
7 the attorneys each have ten pre-emptory challenges so we won't --

8 THE WITNESS: This is my first experience and I am --  
9 I didn't really --

10 THE COURT: You'll have to remain until we tell you  
11 you are excused. You will be advised later.

12 THE WITNESS: Thank you.

13 MR. REMAKLUS: Thank you, Mrs. Gregory.

14 THE WITNESS: Thank you, gentlemen.

15 THE COURT: Bring in Mrs. Claypool.

16 MR. ROBINSON: Your Honor, in the absence of any other  
17 juror being here at the present time, I did not go into  
18 objection in the midst of Mr. Remaklus' questioning for fear  
19 of making a point out of it. But, I do object to the fact  
20 that some reference is made about the inability of Valley  
21 County to hire an investigator and I don't believe it has a  
22 proper place in the questioning.

23 THE COURT: Yes, I'll sustain that objection and not  
24 permit that further remark of that kind in the selection of  
25 the jury.

1                                   DELA CLAYPOOL,  
2   a prospective juror herein, having been first duly sworn, took  
3   the stand and testified as follows:  
4

5                                   VOIR DIRE EXAMINATION

6   BY THE COURT:

7                   Q    Is it Mrs. Claypool?

8                   A    Yes.

9                   Q    I want you to relax, Mrs. Claypool, and I'm going  
10   to ask you a few questions and, then, the attorneys want to  
11   ask you a few.

12                   I will advise you the Court Reporter needs to  
13   write down your answers so you will have to answer loudly  
14   enough so he can hear you.

15                   A    Okay.

16                   Q    I want to first advise you about the length of  
17   this trial and some inconvenience you might be subjected to if  
18   you are chosen as a juror, Mrs. Claypool.

19                   This trial is apt to last up to three weeks, or  
20   some estimate more. But, I would say a reasonable estimate  
21   would be three weeks. After the jury is chosen and sworn it  
22   will be sequestered. Now, this means that the jurors will not  
23   be able to go home during the recesses in the evening, but  
24   will have to be housed in a motel and have their meals  
25   together and things like that.

1 I'm wondering right at the outset whether there's  
2 anything in your personal life at home or your -- if you work,  
3 your work, that would make it impossible for you to do this,  
4 or create what you would consider an extreme hardship for you  
5 to serve under those conditions?

6 A. Well, not impossible but it -- let's say I was  
7 picked today, does that mean I have to stay from now on or will  
8 it be a few days from now?

9 Q. It will be whenever we actually complete the  
10 jury. This might last into tomorrow or maybe even two days.  
11 But, you will have an opportunity to go home until the jury  
12 is picked. Once you -- until the jury is picked and, then,  
13 once -- even if you are chosen you will have an opportunity  
14 to go home and pack clothes and pack the things you need to  
15 have and make whatever arrangements you need to make.

16 A. Well, if I had a few days. I teach ceramics; I'd  
17 have to cancel classes and --

18 Q. Well, probably going to have to be a little  
19 strict on this, Mrs. Claypool, because I'm sure under these  
20 circumstances it isn't going to be convenient for anybody.  
21 So, unless it's going to create some real hardship, probably  
22 we'd need to ask you to try to serve.

23 Now, this wouldn't mean you will be held  
24 incommunicado if you need to communicate with the family or  
25 that, about matters not connected with the case, then you will

1 be able, through your Bailiff, check on the family. You simply  
2 wouldn't be able to communicate with them about the case or  
3 communicate -- or them with you about the case; you understand  
4 that?

5 A. Well, if I could do that and I have a house sale,  
6 I'm selling a house that's an estate sale this weekend, if I  
7 could just take care of that or have somebody take care of it.  
8 I want to do my duty at the same time, I have to do these  
9 things, it will take a couple of days.

10 Q. If you were selected on the jury, could you have,  
11 perhaps through phone calls or something, have someone take  
12 care of that for you?

13 A. Um-hmm.

14 Q. That will be possible?

15 A. Um-hmm, yes.

16 Q. All right. Turning to another matter, then,  
17 Mrs. Claypool, under our law the defendant in a criminal  
18 action is presumed to be innocent until his guilt is  
19 established beyond a reasonable doubt. Now, this principle of  
20 law means that at this stage of the proceedings Mr. Creech  
21 must be considered innocent. I'm wondering if you are able,  
22 at this time, to give him the benefit of this principle and  
23 consider him to be innocent as he sits here today?

24 A. Yes, yes.

25 Q. Have you read or heard anything about this case

1 in the newspapers or on the radio or TV or from any other  
2 source?

3 A. If I have -- I don't believe I have, though, not  
4 that I recall.

5 Q. You don't have any distinct memory or impression  
6 of this case in your mind as you sit here today?

7 A. No, I have it confused with one in Oregon. It  
8 doesn't -- no, I don't know.

9 Q. Can you tell me -- just give me a little  
10 information about what your memory is about this. What the  
11 confusion is, or what you do remember.

12 A. Well, I hate to sound so ignorant, but I have it  
13 confused with the man that took the Spokane couple and this  
14 is probably not it and, of course, he killed those -- the  
15 couple in Spokane and it's probably not this.

16 Q. Well, I can advise you -- I think Counsel agree,  
17 that we can advise the juror that this case has no connection  
18 with that at all. That's -- the defendant in this case -- was  
19 it Bolds?

20 MR. REMAKLUS: Yes, Bolds.

21 THE COURT: And this defendant is Mr. Creech, so this  
22 is an entirely separate case.

23 Q. BY THE COURT: Anything else that you have in  
24 your memory at all about this case?

25 A. Well, what I read in the paper.

1 Q Involving Mr. Creech?

2 A Yes, what I read in the paper a few days ago;  
3 that it had to be moved from Boise because they couldn't  
4 select a jury.

5 Q Yes. Now, this is that case.

6 A That's it.

7 Q Anything else you specifically remember about  
8 that story? About the facts of the case or anything like  
9 that?

10 A No, not the facts of the case, no, except that  
11 the lawyers were going to be up here from Boise looking for a  
12 place to stay, that's all I --

13 Q You don't have any other memory about the case  
14 at all?

15 A No.

16 Q From anything you've read or heard, have you  
17 formed any opinion about the guilt or innocence of the  
18 defendant.

19 A No.

20 Q And you feel completely able to give him the  
21 benefit of this principle of law, the presumption of innocence?

22 A Yes.

23 Q Turn to one other matter.

24 I'll advise you, as a matter of law, Mrs. Claypool,  
25 that under Idaho law neither the jury nor the Court has any

1 discretion as to the penalty to be imposed for first degree  
2 murder. The law makes the death penalty mandatory for first  
3 degree murder.

4 Now, knowing this to be the law, do you have any  
5 personal beliefs or feelings about the death penalty which  
6 would prevent you from fairly considering the evidence and the  
7 law bearing upon the charge of First Degree Murder?

8 A Well, I'd hate to sit on a jury for something  
9 like this, but like -- all I can say is that I know that I  
10 would be as fair -- I would be fair, not as fair as possible,  
11 but I would be fair and --

12 Q I take it you do have some reservations about  
13 the death penalty; is that what you are telling me,  
14 Mrs. Claypool?

15 A No. I really don't have any reservations, I  
16 just -- it's the gravity of the whole situation today is  
17 just -- I wouldn't want -- I wouldn't like to be part of the  
18 jury that would sentence a man to death, but if I'm on the jury,  
19 I would be fair and if I thought he were guilty, I would.

20 Q You understand from the law, as I have explained  
21 it to you, the jury really doesn't decide the penalty. The  
22 law -- the legislature has already fixed the penalty, you  
23 understand that?

24 A Yes, I know.

25 Q But, your affect in finding him guilty of First



1 Degree Murder will, in effect, be calling for that penalty.

2 A. Yes, yes.

3 Q Let me ask it, perhaps, a little differently,  
4 Mrs. Claypool. Would you be able to follow the instructions  
5 of the Court as to this aspect of the case and all other  
6 aspects?

7 A. Yes, um-hmm.

8 Q Would this feeling, whatever it is about the  
9 death penalty, preclude, or prevent you from finding the  
10 defendant guilty of First Degree Murder under any state of  
11 the evidence?

12 A. Would it prevent me?

13 Q Yes.

14 A. No, it wouldn't.

15 Q Do you know of anything else that I haven't  
16 asked you about that would prevent you from being a fair and  
17 impartial juror to both sides in this case?

18 A. No, I would be fair and impartial.

19 THE COURT: Counsel may examine.

20 MR. REMAKLUS: Thank you, Judge.

21

22

23

24

25

VOIR DIRE EXAMINATION

BY MR. REMAKLUS:

Q Mrs. Claypool, are you a part-time real estate sales lady or --

A No, my husband is in real estate, I'm a part-time sales lady at a dress shop.

Q Um-hmm. Well, you mentioned something about selling some property this weekend.

A Well, selling the household goods in a home.

Q And you are -- were you going to clerk the sale?

A Yes.

Q Was there going to be an auction sale?

A No, everything is priced and it's --

Q Um-hmm. I notice that you have not been a juror before. However, in the real estate business you and your husband are used to dealing with lawyers; are you not?

A No, I'm not in the real estate business. My husband is but I am not. I don't have anything to do with real estate, no.

Q Um-hmm. What is your educational background, Mrs. --

A Just high school.

Q Did you -- you say you've lived up in this country for a long time. Where did you grow up?

A I grew up in South Dakota.

1 Q And you've been here most of 30 years?  
2 A Almost 30, yes.  
3 Q Your kids are grown up, is that it?  
4 A Yes.  
5 Q They live around here?  
6 A I have a married daughter that lives here and a  
7 son that is home for a few days.  
8 Q Um-hmm. Are you a grandmother?  
9 A Yes, I am, three.  
10 Q Now, the Judge asked you with reference to the  
11 death penalty and, as he stated, now, do you understand that  
12 the penalty has already been fixed by the legislature? It's  
13 not up to you as a juror, or to the Judge or to me.  
14 A Yes, I understand that.  
15 Q Do you think you can be objective enough to  
16 consider this matter on the evidence and not let sympathy  
17 override your cool and calm judgment?  
18 A Yes, I do believe I could.  
19 Q This is kind of an overwhelming thing, you know,  
20 at least I think it is --  
21 A It is.  
22 Q -- for you to come in here from your home and  
23 be asked these questions.  
24 A Yes.  
25 Q It's quite a little bit to face.

1 A. Um-hmm.

2 Q And that's why, maybe, we asked the same thing,  
3 you know, two or three different ways.

4 It's a very solemn obligation.

5 A. Yes.

6 Q You know the oath that you took over there? You  
7 feel, then, that if the evidence proves guilt beyond a  
8 reasonable doubt that you could return a verdict of guilty  
9 based upon that evidence?

10 A. Yes, I do believe I could.

11 Q Um-hmm. Now, the Judge will give you the  
12 instructions and read them to you as to what the law is that  
13 applies to this case and you, as a trial juror, will decide  
14 the facts; that is, the fact of guilt or innocence.

15 Now, I'm sure you can follow the Judge's  
16 instructions. Would you be willing to do so?

17 A. Yes.

18 Q Are you -- you and your husband, do you have any  
19 hobbies?

20 A. Well, of course, I teach ceramics at home, I have  
21 classes at home.

22 Q Um-hmm. And I was going to ask you about that.  
23 Do you hold classes regularly?

24 A. Yes, four classes a week at home.

25 Q So that's kind of your hobby and it's turned into

1 a --

2 A. Well, yes, it was a hobby and --

3 Q. Now it's a job?

4 A. It's a job, yes.

5 Q. Do you have men and women, both, in your classes?

6 A. No, just ladies.

7 Q. Um-hmm. Does this -- how big a class do you

8 generally have?

9 A. Oh, probably 11, that's the largest.

10 Q. And do these people come in once a week?

11 A. Yes, once a week.

12 Q. So you actually have four separate groups each?

13 A. Yes.

14 Q. That puts you in contact with quite a few of your

15 friends and neighbors on a daily basis; doesn't it?

16 A. Yes. But, it isn't like playing cards, you know,

17 where you can visit afterwards. This is, you know, they are

18 there for a purpose and they have to pay money to come to

19 class.

20 Q. Um-hmm.

21 A. So, it's business.

22 Q. They take it rather seriously, then?

23 A. They take whatever they are working on seriously,

24 yes.

25 Q. Yes. You think that if you were called on, you

1 know, finally accepted as a juror here, that you would be  
2 called upon to explain your actions to your students?

3 A. My actions, like how I voted?

4 Q. Yes.

5 A. No, I don't feel I would have to.

6 Q. I think this is a rather important decision, you  
7 know, important matter for us to talk about. But, as long as  
8 you are satisfied in your own mind, I'm sure I would be.

9 A. Um-hmm. I'm, oh, what's the word? Not  
10 opinionated, I form my own decisions and my own opinions and  
11 I do change if I see that, you know, I am wrong. But, I  
12 don't -- I have never felt like I have to account for what I  
13 do to anybody else.

14 Q. You are used to making decisions?

15 A. I make decisions, yes.

16 Q. I think any teacher has to make decisions or else  
17 you couldn't be a teacher.

18 You say your son is home. Is he in the Service?

19 A. No, he just graduated from high school last year  
20 and he's had an apartment with a boy, but he's home  
21 temporarily until he finds another place. So, he'll be staying,  
22 probably, about a week, maybe less, maybe more.

23 Q. I see.

24 A. And he will be going in the Service later.

25 Q. So that would not, then, interfere --

1           A.    No, no.

2           Q.    -- in giving your undivided attention to this

3 case, then; would it?

4           A.    Yes.

5           Q.    I'm sure this is going to be a hardship for all

6 of us and particularly difficult for the jurors because they

7 are going to have to stay, you know, under some supervision

8 because of the nature and seriousness of it and that wouldn't

9 bother you, would it?

10          A.    No, as long as I had a few days to take care of

11 these things that I have to take care of. I would have to

12 cancel classes, get ahold of 40-some girls to cancel and, then,

13 I would have to have somebody arrange the house sale this

14 weekend. That has to be done, everything is marked, it would

15 have to be -- I would have to have somebody take charge of it.

16          Q.    Yes. Are there -- do you have someone in mind?

17 I'm not asking you who it is, but do you have someone in mind

18 that could do that for you?

19          A.    Yes, I do.

20          Q.    Um-hmm. And what do you think, by way of time,

21 that it would take you to make your arrangements?

22          A.    Well, today and tomorrow at least.

23          Q.    I'm not sure we'd have that much time is what

24 I'm leading up to.

25          A.    Well, -- but if I were chosen I would have today

1       that I could come and go as I pleased and tonight or not?

2               Q     I'm sure --

3               THE COURT:  Yes, there isn't any question you could  
4       come and go as you please today and tonight.

5               THE WITNESS:  But tomorrow?

6               THE COURT:  Tomorrow we don't know.  It depends on  
7       whether we're still in the process of picking the jury or not.

8               THE WITNESS:  I see.  If I knew for certain I would --  
9       is going to be picked today, I could probably take care of it  
10      all.

11              THE COURT:  We'll be in a better position to tell  
12      this evening when we take our recess, some kind of an idea  
13      where we are.

14              THE WITNESS:  So I should take care of it today?

15              THE COURT:  I think you'd better plan on taking care  
16      of this as quickly as you can.

17              THE WITNESS:  If I would take care of it and cancel  
18      all these classes and do all these things and then find out,  
19      no, you are not on the jury, then I've got to call everybody  
20      back; is that what you mean?

21              THE COURT:  I'm not suggesting you do that because  
22      you will have a chance to make telephone calls once you know  
23      that you are definitely going to be on the jury before you are  
24      locked up.

25              THE WITNESS:  Yes.



1 THE COURT: That's what it amounts to. We wouldn't  
2 just put you away without a chance to go home and pack and  
3 do things like that.

4 THE WITNESS: I realize that, but the only thing I'm  
5 not quite sure on is that will be told, now, that I'm on the  
6 jury or not?

7 THE COURT: No, we can't tell until -- as I explained  
8 over in the other courtroom, the attorneys, if they accept you  
9 for cause, can still challenge any juror on pre-emptory  
10 challenges by just writing the name on a slip of paper and  
11 each side has ten challenges. Until all those have been  
12 used, we just don't know who is going to be on the jury.

13 THE WITNESS: I think --

14 MR. REMAKLUS: Thank you, Judge.

15 Q. BY MR. REMAKLUS: You can see why it's a little  
16 uncertain at this point, I'm sure, Mrs. Claypool.

17 A. Yes.

18 Q. You folks, do you take the daily papers?

19 A. Yes.

20 Q. And do you -- are you a reader?

21 A. Yes, I read the paper. I do not read about  
22 things like this that do not happen in our area. I don't  
23 like -- I just as soon -- I mean, why, I'd just as soon not.  
24 I read what's going on in our country, but, as far as  
25 sensational stories and things like this, I'd just as soon --

1 I don't care to read it.

2 Q Um-hmm. What other kind of reading do you do --  
3 do you and your husband do?

4 A Well, I can't speak for my husband, but I read  
5 the Antique Trader. I deal in antiques.

6 Q Um-hmm.

7 A Cermaic books and, then, we get a few magazines.  
8 I read religious books.

9 Q Are you active in your church?

10 A Yes -- well, active? I'm a practicing  
11 Catholic. I don't belong to any of their active groups, no.  
12 I belong, but only to pay my dues, I don't participate.

13 Q Do you attend church fairly regularly?

14 A Regularly.

15 Q Um-hmm.

16 MR. ROBINSON: Your Honor, may I impose on the  
17 Court for a short recess?

18 THE COURT: Yes, we'll take a ten-minute recess. You  
19 can go back into the jury room, Mrs. Claypool, and we'll have  
20 you come out when we get ready to start again.

21 Do not discuss with the other members of the  
22 panel what you've been questioned about.

23 THE WITNESS: All right.

24 (Recess taken.)

25 THE COURT: Counsel ready to proceed?

1 MR. ROBINSON: Yes, Your Honor.

2 MR. REMAKLUS: Yes, Your Honor.

3 THE COURT: Get Mrs. Claypool.

4 (Whereupon the prospective juror re-entered the  
5 courtroom.)

6

7 VOIR DIRE EXAMINATION (Continued)

8 BY MR. REMAKLUS:

9 Q Mrs. Claypool, as the Judge has told you when  
10 you first seated there, that the State has to prove the case  
11 beyond a reasonable doubt. Now, I'm sure during the  
12 other instructions that you will receive from the Court that  
13 you will be instructed as to what constitutes reasonable doubt  
14 and I'm sure that it will be distinguished from any doubt that  
15 has to be reasonable.

16 Do you think you could follow the Judge's  
17 concept of this proposition of reasonable doubt?

18 A Well, I would, really, like to have, you know,  
19 it all explained to me again and I know that I would be fair.  
20 But, if you'd like to explain it again --

21 Q Well, I'm sure that there will be further  
22 instructions and it will be explained to you, you may be  
23 assured of receiving specific instructions and it doesn't  
24 appear to me that you should have any difficulty with the  
25 Judge's instructions. How do you feel, you think --

1           A.     I'm sure I wouldn't have any difficulty with the  
2 Judge's instructions either.

3           Q.     And, then, if we meet this high burden of proof,  
4 then are you sure in your own mind that you could return a  
5 verdict based on that evidence?

6           A.     Yes, I could.

7           MR. REMAKLUS: I'm going to pass this juror for  
8 cause, Your Honor. Thank you.

9  
10                               VOIR DIRE EXAMINATION

11          BY MR. ROBINSON:

12           Q.     Mrs. Claypool, to start out with I want to  
13 assure you that neither I nor other Counsel, Court, are wanting  
14 to pry into your affairs for embarrassment and that the reason  
15 and purpose of our questioning is to determine for ourselves,  
16 we have our duty to make sure that we do and are able to  
17 select an unbiased and unprejudiced juror; you understand that?

18           A.     Yes, I do.

19           Q.     So, you will forgive me if I do touch on personal  
20 matters of your family.

21           A.     Yes, that's all right.

22           Q.     Knowing that it's -- the reason is to perform  
23 these duties.

24           A.     Yes.

25           Q.     All right. Now, Mrs. Claypool, have either you

1 or any relative or member of your family been a victim of any  
2 crime?

3 A. No.

4 Q And from your affiliation with the Catholic  
5 Church, I take it and assume the fact that you do believe in  
6 God; is that correct?

7 A. That is correct.

8 Q And also knowing the Doctrine of the Catholic  
9 Church, is it fair to state that you do believe in Satan?

10 A. I do believe in Satan.

11 Q Have you become familiar in the publications,  
12 newspaper articles, periodicals or otherwise of Satanic Cult  
13 organizations?

14 A. Have I read about them, did you say?

15 Q Yes.

16 A. Well, no, I haven't read about them. I have  
17 heard about them but I don't read things like that.

18 Q Now, in your socializing, your business affairs  
19 here in Silver Valley or, for that matter of fact, elsewhere,  
20 but, specifically here in Silver Valley, has there been some  
21 rumor, or discussion, regarding witchcraft being practiced  
22 here in Shoshone County, the Rathdrum area?

23 A. Yes, I've heard about this.

24 Q What have you heard about it?

25 A. Well, I've heard that in Inaville that supposedly

1 there were a few hooded people up there and that they'd been  
2 stopping cars on the road. Then, I heard in Post Falls that  
3 there were, you know, a group of them there.

4 I hadn't heard what was going on.

5 Q You mean you haven't heard anything about what  
6 rumors as to their activities?

7 A No, not as to what they were doing in Post Falls,  
8 you know, having some sort of meetings. But, I don't know  
9 of anything specific; what they were doing, but they were  
10 supposed to be a group of them in Post Falls.

11 Q Now, what newspapers or periodicals do you and  
12 your husband, Mr. Claypool, --

13 A I get the Kellogg Evening News and we get the  
14 Spokane -- the Chronicle -- no, we get the morning paper, the  
15 Review and, then, I get the Catholic Register. I get the  
16 News Trader, which is an antique magazine.

17 Q How about periodicals, Newsweek, U.S. News and  
18 World Report, Time magazine, any of those kinds?

19 A No, we're not getting the Time now.

20 Q Now, Mrs. Claypool, your husband has related to  
21 you that I had contacted him over the last month, month and  
22 a half, regarding possible place to reside while this trial  
23 is going on; he's mentioned that to you, hasn't he?

24 A Well, I don't remember names and he will say a  
25 little bit about his business, but I don't know that it was

1 you that contacted him. But, I do know that he was looking  
2 for a trailer or getting a space for a lawyer that was coming  
3 up for the trial. Now, I don't know whether it was the  
4 defense or the --

5 Q So, is it fair to state, generally, that whatever  
6 those occurrences were between your husband and I, had no  
7 effect at all on your thinking, or examining any periodical or  
8 newspaper more closely?

9 A No. If -- like I say, I don't even know, but I  
10 know that a lawyer did contact him and that was -- I'm sure  
11 he must have given me a name, but I don't have anything to do  
12 with real estate or pay too much attention to it.

13 Q All right. And would you just relate to us what  
14 information has come to you about this trial prior to today?

15 A Well, prior to today I probably heard about it.  
16 The first thing that -- the first thing I heard about that I  
17 can recall is the fact that my husband did say that he was  
18 looking, or that a lawyer had contacted him and they would be  
19 here for a number of weeks and that he wanted a trailer house,  
20 they were going to get some place at a trailer court or  
21 something to that effect; that it would be quite a lengthy  
22 trial and that they, you know, would have some place -- they  
23 wanted some place to stay.

24 Then I heard that they were thinking of -- no, I  
25 guess that idea was gone, he told me again that, no, I guess

1 that it wasn't so; that they wouldn't be moving up to the  
2 trailer court. Then I heard -- read in the paper about that  
3 they had to move the trial out of Boise because they couldn't  
4 get a jury.

5 Other than that I'm sorry, but I don't know  
6 anything more about it.

7 Q And in your social life, contacting friends,  
8 relatives, this case has never come under discussion?

9 A I'm sure it has, but I don't pay attention to a  
10 lot of this. It doesn't -- if it was about an antique or  
11 something, ceramics, you know, people in the valley, yes;  
12 but, I really don't pay attention to this out of our  
13 community.

14 Q All right. Then, it's safe for me to say, and  
15 you agree, that you have formed no opinion whatsoever about  
16 the facts of this case at all?

17 A That is correct.

18 Q Now, it may come to pass, Mrs. Claypool, that  
19 the testimony of parties and some of the written documents  
20 may make reference to some profane, crude, very course  
21 terminology. Would the fact that this comes in during the  
22 course of this trial cause you undue embarrassment and  
23 thereby, possibly, cause you prejudice towards either party?

24 A I don't get embarrassed that easily.

25 Q Since you, in fact, do know yourself better than



1 any one of us here, and from what the Court has advised you  
2 what this trial is about, a double murder circumstance in  
3 Valley County, do you know of anything regarding your personal  
4 make-up that would prevent you from being a fair and unbiased  
5 juror if you were selected?

6 A. No, I don't. I'm sure that I would be fair and  
7 I know I would be fair. I would rather not serve on the jury,  
8 you know, I think --

9 Q. And that is for the reason Judge Durtschi has  
10 asked you regarding it being a long, or protracted, trial and  
11 interference with your normal scheduled life?

12 A. No, no, that isn't it. I could arrange that.  
13 I just mean that, you know, that it's too bad that we have to  
14 do this. I would be fair. No, there are things, you know,  
15 that you would rather do that -- other disagreeable things  
16 that you would rather not do but have to be done. I would  
17 rather not do this, but I would do it if I were chosen and  
18 I would be fair.

19 Q. And what you are saying is that if you had your  
20 drothers you would rather not participate in a trial that has  
21 a man's life at stake?

22 A. I would rather not be -- participate in anything  
23 that was -- well, how should I say it? You know, I think we  
24 all would rather be and do things that are -- that help  
25 people and are joyous to you and this is, you know, all I can

1 say is that I would be fair. I would rather spend three  
2 weeks in a vacation.

3 MR. ROBINSON: All right. I pass Mrs. Claypool for  
4 cause, Your Honor.

5 THE COURT: Since you've been passed for cause by  
6 both attorneys we will have to ask you to remain, not  
7 discuss the questions with the other members of the jury panel.  
8 So, you can step down, back into the jury room.

9 THE WITNESS: Okay.

10 THE COURT: Next will be Mrs. Crinkovich.

11  
12 BARBARA A. CRINKOVICH,  
13 a prospective juror herein, having been first duly sworn, took  
14 the stand and testified as follows:

15  
16 VOIR DIRE EXAMINATION

17 BY THE COURT:

18 Q Mrs. Crinkovich, I want to ask you a few questions  
19 first, and then the attorneys will ask you a first questions.  
20 None of them are going to try to embarrass you so just try to  
21 relax.

22 I want to advise you first that this trial may  
23 last up to three weeks. There have been some estimates of  
24 more, but I think three weeks is a reasonable estimate.

25 After the jury is actually chosen and sworn to

1 try the case it will be sequestered; which means that the  
2 jurors will have to be housed in a motel and eat together and  
3 won't be able to go home, at least while we're taking jury  
4 recesses. While we are picking the jury you will be free to  
5 go home. I'm wondering if there's anything in your personal  
6 life, the home situation or work situation that might be  
7 involved in that; not just talking about inconvenience, I  
8 think it would be inconvenient for everybody. But, impossible  
9 or extreme hardship for you to serve under these conditions?

10 A. Just -- I have -- my oldest daughter has an  
11 asthmatic problem which I have to take her to Spokane to the  
12 doctor once a month.

13 Q. Will that appointment be coming up within the  
14 next three weeks?

15 A. Yes, um-hmm. The 25th of October.

16 Q. The 25th of October?

17 A. Um-hmm.

18 Q. If you happen to still be at trial, the trial  
19 still be going at that time, is there someone else that could  
20 do that in an emergency?

21 A. Yes, I would imagine.

22 Q. A relative or someone, other member of the  
23 family?

24 A. Yes, um-hmm.

25 Q. That's -- when she's at home and gets that once

1 a month treatment, does she get along all right?

2 A. Yes.

3 Q. How old is she?

4 A. Eleven.

5 Q. Except for that problem of transportation to the  
6 doctor, she gets along all right, then?

7 A. Um-hmm.

8 Q. I think you will have to answer -- he has to write  
9 down everything that's said here --

10 A. Oh, okay.

11 Q. -- Mrs. Crinkovich, so you do need to answer  
12 audibly.

13 As I understand that, what you probably do is  
14 furnish transportation, you don't have to personally consult  
15 with the doctor?

16 A. I have been every time, yes. She's on shots right  
17 now and this is the reason for the appointment this month is,  
18 she went to --

19 Q. Does the doctor need to interview you, or anything  
20 like that to get information from you about the situation?

21 A. Well, I would like to be there. I mean, I could  
22 put it through someone else.

23 Q. You could have someone else do it?

24 A. I suppose I could, yes.

25 Q. Have you read or heard anything about this case

1 in the newspapers or on radio or TV or any other source?

2 A Just in the -- I don't know what -- if it was in  
3 the Kellogg or Wallace paper; that short article that was the  
4 one last week about the trial going to be here.

5 Q Do you have any distinct memory that -- anything  
6 that stands out in your mind about what you read in that that  
7 impressed you or anything that caused you to remember it?

8 A I can't say that it has impressed me, but I read --

9 Q What I'm trying to get at is whether it impressed  
10 you enough so that you actually have it in your mind so that  
11 you can relate it to us. Can you relate to us what you read in  
12 the article?

13 A Just the name of the fellow, what he was up for,  
14 for the two murders of these so-called two men.

15 Q That's the extent of it?

16 A Plus in Oregon case, that's all I can remember  
17 that I read on it.

18 Q Do you remember what you read about the Oregon  
19 case?

20 A I don't remember if that -- after his trial -- how  
21 this trial went that he would be called there or how it was  
22 worded. I don't remember exactly.

23 Q You just have a memory of something about an  
24 Oregon case, is that what it amounts to?

25 A Right.

1 Q And you don't remember the details of that?

2 A No, I'm afraid not.

3 Q I'm going to advise you, Mrs. Crinkovich, that  
4 under our law a defendant in a criminal action is presumed to be  
5 innocent until his guilt is established beyond a reasonable  
6 doubt.

7 Now, this principle of law means that at this  
8 stage of the proceeding Mr. Creech sits here this morning in  
9 court, he must be considered by you to be innocent. Can you  
10 follow this principle of law? Are you able to give Mr. Creech  
11 the benefit of this principle; you consider him to be innocent  
12 at this point in time?

13 A Right now?

14 Q Right now.

15 A I don't really think I can answer that right now.

16 Q You understand, of course, that the Court will give  
17 you instructions on the law, the Court is the judge of the law  
18 and you are the judge of the facts and you will not be -- you  
19 will be instructed not to make up your mind, to keep your mind  
20 entirely open until you've heard all the evidence presented by  
21 both sides and heard the instructions of the Court and that's  
22 the first point in the trial that you should make a final  
23 decision in your whole mind about the guilt or innocence of the  
24 defendant.

25 Now, could you follow that procedure?

1 A. I could follow it, yes.

2 Q What I'm getting at is this: If you serve on the  
3 jury you will reach a point where you would have to make a  
4 decision based on the law and the evidence.

5 A. Yes, I understand this.

6 Q Now, I understand that it, of course, right now  
7 you haven't heard anything, basically, instructions or the  
8 evidence, so you can't make an educated, or advised, opinion on  
9 the case. But, you see, that being the situation the law  
10 actually requires you, then, until you've heard that evidence  
11 and guilt has been established beyond a reasonable doubt the  
12 law requires you to say the defendant is innocent if you can, in  
13 good conscience do that. All I'm trying to find out is, as he  
14 sits here today, without you having heard any evidence about  
15 the case or anything, can you give him the benefit of this  
16 principle?

17 A. No.

18 Q You don't think you can?

19 A. No.

20 Q Is that based on what you have heard or read about

21 A. Just what I read in the paper.

22 Q That has caused you to form an opinion about his  
23 guilt or innocence at this point?

24 A. I would say so, yes.

25 Q Would you say, examining your own conscience at

1 this point that it would be impossible for you to set that  
2 aside and lay it entirely aside and render an opinion based on  
3 the law and the evidence presented here in court?

4 A. I'm not saying it would be impossible.

5 Q. But, you feel it would be difficult?

6 A. It would be, yes.

7 Q. Do you think it would require evidence to overcome  
8 your belief?

9 A. I would like to hear the evidence, yes, before I  
10 would judge him completely.

11 Q. But, what I'm saying, would it require evidence to  
12 have you set aside the present opinion you have?

13 In other words, would he have to come forward with  
14 some evidence to prove he was innocent?

15 A. Right.

16 Q. That is what you are saying right now?

17 A. Yes.

18 MR. ROBINSON: I'd stipulate, Your Honor.

19 THE COURT: I would, if Counsel wants to, excuse --

20 MR. THOMAS: I don't believe we would have any  
21 objections to her being excused for cause.

22 THE COURT: All right. We appreciate your frankness,  
23 Mrs. Crinkovich, and we will excuse you at this time; which  
24 means you will be able to leave. I don't have another  
25 appearance date for you. You will have to be available when



1 the Jury Commissioner calls you for further appearances.

2 THE WITNESS: Okay. Thank you.

3 THE COURT: So, I think you can get out this door  
4 easier and I would ask you if you come in contact with other  
5 members of the jury panel that you not discuss this questioning  
6 with them.

7 THE WITNESS: Okay. Thank you.

8 THE COURT: Mrs. Hull is next.

9  
10 MARJORIE K. HULL,  
11 a prospective juror herein, having been first duly sworn, took  
12 the stand and testified as follows:

13  
14 VOIR DIRE EXAMINATION

15 BY THE COURT:

16 Q Mrs. Hull, I'm going to ask you a few questions  
17 first and, then, Counsel will each want to ask you some  
18 questions. The Court Reporter does need to take down the  
19 entire proceeding here so you will need to answer so he can  
20 hear you.

21 A All right.

22 MR. REMAKLUS: Your Honor, I'm wondering if we could  
23 ask Mrs. Hull some early questions since her husband is an  
24 attorney here in Wallace.

25 THE COURT: No, I'm going to go through the same

1 questions.

2 MR. REMAKLUS: All right.

3 THE COURT: I don't think being a wife of an attorney  
4 disqualifies a juror in any way.

5 MR. REMAKLUS: I don't think so either.

6 THE WITNESS: The only thing that might disqualify me,  
7 my son is a Chief Deputy Prosecuting Attorney in Ada County  
8 when the defendant was brought in.

9 THE COURT: Down there?

10 THE WITNESS: In Boise, and we were down there several  
11 times and discussed the case with him before the "gag order"  
12 was imposed.

13 THE COURT: Okay. Well, we will go into that  
14 questioning first, then.

15 THE WITNESS: All right, um-hmm.

16 Q BY THE COURT: Perhaps the other thing I've been  
17 taking up with the jurors are, first, to find out whether  
18 there's any problem there or not; discuss that with you too.  
19 This trial may last three weeks.

20 A Um-hmm.

21 Q That's a reasonable estimate. Some estimated  
22 longer and I think three weeks is a reasonable estimate.

23 After the jury has actually been selected and  
24 choosing the jury is completed, the jury will be sequestered  
25 at that time; which means that it will be kept in a motel,

1 housed in a motel.

2 A. Yes, um-hmm.

3 Q Can't go home. Would this create any extreme  
4 hardship or impossible situation in your personal home life?

5 A. No, I don't think so.

6 Q Let's go to this other point, then. You say your  
7 son, who is an attorney, has discussed some of the facts of  
8 this case with you?

9 A. Yes. We were in Boise several times when Alan was  
10 doing some investigating and when the prisoner was brought in.

11 Q I see. Based on what you have heard from him,  
12 do you feel you have formed some opinion as to his guilt or  
13 innocence at this point?

14 A. Well, I'm afraid I have.

15 Q Would it take some evidence to set that aside?  
16 In other words, would he have to, in effect, sort of prove  
17 his innocence?

18 A. Um-hmm, yes it would.

19 THE COURT: I see. All right, Counsel have anything?

20 MR. ROBINSON: I'd stipulate, Your Honor.

21 MR. REMAKLUS: Yes, Your Honor.

22 THE COURT: We appreciate your frankness, Mrs. Hull,  
23 and we will excuse you. You still will be on call as a juror.  
24 I don't have a further appearance date, but you may be called  
25 by the Jury Commissioner to report at a future case. Thank you.

1 THE WITNESS: Thank you.

2 THE COURT: I think you can go out that front door and  
3 we'll ask you not to discuss the questioning here with any of  
4 the other members of the panel.

5 The next juror is Mrs. Brackebusch.

6  
7 MARGARET M. BRACKEBUSCH,  
8 a prospective juror herein, having been first duly sworn, took  
9 the stand and testified as follows:

10  
11 VOIR DIRE EXAMINATION

12 BY THE COURT:

13 Q Mrs. Brackebusch, is that the correct  
14 pronunciation?

15 A Yes.

16 Q I'm going to ask you just a few questions, first,  
17 Mrs. Brackebusch, and then the attorneys will each want to  
18 ask you some questions. The Court Reporter here needs to take  
19 down all the proceedings so you will need to answer audibly so  
20 we can hear you.

21 A Okay.

22 Q First, I want to just advise you that it's  
23 estimated this trial may last three weeks.

24 After the jury is chosen and sworn to try the  
25 case the jury will be sequestered; this means that at that

1 point once the jury is actually sworn and the trial starts the  
2 jurors won't be able to go home at night during the recess, they  
3 will be housed in a motel and have to eat together. I'm  
4 wondering if there's anything in your personal life, your home  
5 situation or work situation that will make this an extreme  
6 hardship, or make it impossible for you to serve under these  
7 conditions. I use the word "extreme" because I'm sure it  
8 wouldn't be convenient for anyone, so we can't let just  
9 inconvenience be sufficient. But, if there is some serious  
10 problem we'd like to know about it.

11 A. I have three children, a girl two, another girl  
12 four and a son six, and I don't feel that I could leave them  
13 for any long period of time and be away from them for that long  
14 of a period.

15 Q. You don't have anyone older living in the home  
16 that would be there on a regular basis?

17 A. And we don't have relatives close at all, so --

18 Q. I see. Will that pose a serious problem? Do  
19 Counsel have reservations about excusing?

20 MR. REMAKLUS: No, I think she should be excused.

21 MR. ROBINSON: No reservations, Your Honor.

22 THE COURT: All right, we appreciate your problem,  
23 Mrs. Brackebusch, and we will excuse you, then. We appreciate  
24 your appearance at this -- this morning. You will be subject  
25 to call, perhaps, on future trials. The Jury Commissioner will

1 be in touch with you if you need to report in the future.

2 THE WITNESS: Thank you.

3 THE COURT: If you will not discuss any questioning here  
4 with the other members of the panel if you happen to run into  
5 them. You may leave through that door.

6 Bring in Mr. Jasberg.

7

8 MICHAEL W. JASBERG,  
9 a prospective juror herein, having been first duly sworn, took  
10 the stand and testified as follows:

11

12 VOIR DIRE EXAMINATION

13 BY THE COURT:

14 Q Mr. Jasberg?

15 A Yes, sir.

16 Q Is that the correct pronunciation?

17 A Yes, sir.

18 Q I want to ask you a few questions first,  
19 Mr. Jasberg, and then the attorneys will want to each ask you  
20 some questions.

21 A Okay.

22 Q Also the Court Reporter here needs to write down  
23 the entire proceedings so you will need to answer audibly and  
24 loudly enough so he can hear you.

25 A Yes, Your Honor.

1           Q     I want to take up first a matter of advice to you  
2 of a matter that may cause inconvenience to you so we can get  
3 that out of the way first. This trial may take three weeks.  
4 I think that's a reasonable estimate at this time. Once the  
5 jury is actually sworn and chosen, sworn to try the case and  
6 the trial actually starts, the jury will be sequestered. Now,  
7 this means that you won't -- the jurors won't be able to go home  
8 during recesses, they will be housed in a motel, have to eat  
9 your meals together.

10           I'm wondering if there's anything in your personal  
11 life or your home or work situation that would make this  
12 impossible for you to do or create an extreme hardship. I  
13 word it in those terms because I don't think it will be  
14 convenient for anyone.

15           A.     Yeah.

16           Q     So probably needs to be something more than just  
17 mere inconvenience. But, if you do have what you consider an  
18 impossible situation, real hardship, we'd like to know about it.

19           A.     Well, I have one situation that I would think is  
20 a hardship to me and that is next week I'm registered for a  
21 class for further development of my career; which is not  
22 possible to take except at certain times and in certain places.  
23 I'm already registered, I have plane reservations and  
24 everything for this seminar class. It's a five-day class.

25           Q     If you cancelled that, how long would you have to

1 wait before you could repeat it, or get it set up again?

2 A. As far as I know it's the only time it will be held  
3 in the Northwest this year.

4 Q The only time this year?

5 A. At least for a full year.

6 THE COURT: Counsel have any reservations about excusing  
7 Mr. Jasberg?

8 MR. REMAKLUS: No, we have no objection.

9 THE COURT: Mr. Robinson?

10 MR. ROBINSON: No objection, Your Honor.

11 THE COURT: All right, under those circumstances,  
12 Mr. Jasberg, we'll excuse you, then. We appreciate your  
13 appearance, you will be subject to call by the Jury Commissioner  
14 on future cases. We don't have any particular date right now.  
15 We appreciate your appearance here this morning. If you will  
16 not discuss this questioning with any member of the jury.

17 THE WITNESS: Thank you. I appreciate it.

18 THE COURT: You may leave through the front door.

19 Bring in Mr. Etherton.  
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1 JACK ETHERTON,  
2 a prospective juror herein, having been first duly sworn, took  
3 the stand and testified as follows:  
4

5 VOIR DIRE EXAMINATION

6 BY THE COURT:

7 Q Be seated, please.

8 It's Mr. Etherton, is that right?

9 A Yes, sir.

10 Q Is that the correct pronunciation?

11 A That is correct.

12 Q Mr. Etherton, I want to ask you a few questions,  
13 first, and then the attorneys want to ask you some questions.

14 This whole proceeding has to be reported by the  
15 Court Reporter so you will need to answer audibly and speak  
16 loudly enough so that he can hear you and write these things  
17 down.

18 I want to, first, take up this matter of the  
19 inconvenience you may be subjected to in sitting as a juror in  
20 this case. This trial may last three weeks, some estimates are  
21 longer, but I think three weeks is a reasonable estimate.

22 After the jury is finally chosen and sworn to try  
23 the case and the trial actually commences, the jury will be  
24 sequestered; this means the jury will be housed in a motel and  
25 won't be able to go home. Of course, until the selection is

1 completed you will be free to go home during recesses.

2 I'm wondering if there's anything in your personal  
3 life or your home or work that would make it impossible for you  
4 to perform this service, or create an extreme hardship. I use  
5 the terms "extreme" because I don't think it would be  
6 convenient for anyone that sits on this jury, there is going to  
7 be some hardship on everyone. But, I wonder if there's  
8 something that you, in your life, that you considered just a  
9 simple impossible situation to serve?

10 A. Not that I can think of right now. It's  
11 inconvenient, all right, but --

12 Q. But, if you were required to, you feel you could  
13 live with this? Meet this responsibility?

14 A. I could, yes.

15 Q. Mr. Etherton, under our law a defendant in a  
16 criminal action is presumed to be innocent until his guilt is  
17 established beyond a reasonable doubt. In the course of the  
18 trial I will give you further instructions as to the meaning of  
19 this, but what it means right at this point is that at this  
20 stage of the proceedings Mr. Creech must be considered to be  
21 innocent.

22 Now, are you able at this time to give him the  
23 benefit of this principle and consider him to be innocent?

24 A. Yes, you wonder, would I consider that he would be  
25 a victim of a false arrest?

1           Q     No, I'm just wondering -- you see, right now you  
2 haven't heard any evidence and, as the case is tried, you will  
3 be instructed that you have to base your decision on the  
4 evidence that's received here in open court and on the law that  
5 -- as given by the Court and that you wouldn't be able to form  
6 an opinion and make up your mind on the case until it's been  
7 fully presented by both sides and you've heard the instructions  
8 of the Court and heard the closing arguments. Then you'll have  
9 to make a decision, based on all these things.

10                 All this principle means is that right now, before  
11 the trial is ever started, you haven't heard any evidence, that  
12 the law requires you to, if this is followed, to consider  
13 Mr. Creech innocent as he sits here today.

14           A     Yes.

15           Q     And require the State to prove him guilty if they  
16 can.

17           A     I could do that.

18           Q     You could do that?

19           A     Yes.

20           Q     In other words, what they are trying to see is  
21 whether there is anything in your mind that's caused you to  
22 form an opinion right now without having heard any evidence or  
23 law in the case; any opinion on his guilt or innocence. Have  
24 you formed any opinion as to his guilt or innocence?

25           A     I've formed no opinion.

1 Q You've formed no opinion?

2 A Right.

3 Q Have you read or heard anything about this case  
4 in the newspapers or on the radio or TV or from any other source?

5 A Some time ago I read -- I believe I heard on the  
6 radio, perhaps television, some things. I -- they are very  
7 dim in my memory. I knew that something happened and when I  
8 heard that the trial was going to be changed to another county,  
9 well, I started to try and forget anything about it.

10 Q We do, perhaps, need to pursue that a little,  
11 Mr. Etherton, and try to probe your memory and see what facts  
12 you do remember, if any, right at this point.

13 Do you have a distinct memory of any specific  
14 facts about the case that you read or heard at that time?

15 A No distinct memory, no. I think the only thing  
16 I could dredge up in my memory would be that something had  
17 happened in an automobile and this morning my wife mentioned,  
18 as she was telling me everything she didn't know, she mentioned  
19 two men had been killed and this is all I can remember of this  
20 case.

21 Q That's all you can remember of that case?

22 A Um-hmm.

23 Q Turn to another matter, Mr. Etherton. Under our  
24 Idaho law ~~neither~~ the jury nor the Court has any discretion as to  
25 the penalty to be imposed for First Degree Murder. The law

1 makes the death penalty mandatory in Idaho for First Degree  
2 Murder.

3 Now, knowing this to be the law, do you have any  
4 personal beliefs or feelings about the death penalty which would  
5 prevent you from fairly considering the evidence and law bearing  
6 upon the charge of First Degree Murder?

7 A. Yes. I don't think the death penalty should be  
8 carried out in any case. I mean, I couldn't say that anybody  
9 deserves to be dead, but I have no religious beliefs that would  
10 cause me to establish this.

11 Q. But, you do have a strong personal belief about  
12 it?

13 A. By strong --

14 Q. Well --

15 A. I hadn't given it that much thought. I haven't  
16 complained to eliminate the death penalty, it's not that strong.

17 Q. Let me ask it this way, Mr. Etherton: Bearing in  
18 mind that, of course, your decision as to the guilt or innocence  
19 of the defendant and any degree of homicide will have to be  
20 determined after you've heard all the evidence, the law from  
21 the Court and closing arguments. I was wondering if your  
22 present opinion about the death penalty is such that it would  
23 preclude, or prevent, you from finding the defendant guilty of  
24 First Degree Murder under any state of the evidence?

25 A. Knowing that the death penalty might be imposed?

1 Q That knowing that if you find him guilty of  
2 First Degree Murder it is mandatory that it be imposed. Would  
3 that just absolutely bar first degree murder in your mind under  
4 any circumstances?

5 A Yes, I believe it would. This death penalty is  
6 so final, it's -- I don't like to say this because it may  
7 bar me from the jury and I don't especially want to get off  
8 this jury, it's --

9 Q We appreciate your frankness. We want you to be  
10 just open and frank with us, Mr. Etherton.

11 A As I'm trying to -- I've given it some thought,  
12 probably not enough and I'm trying to think now, what if it  
13 were on a ballot and I were to vote, I think I'd vote -- I'd  
14 vote against the death penalty. So --

15 Q What I've told you, though, is under our law. You  
16 wouldn't be voting on any ballot on what penalty should be  
17 imposed, you will be simply voting on whether he's guilty or not  
18 guilty as to First Degree Murder or Second Degree Murder.

19 A Yes.

20 Q Manslaughter. But, you should know, and do know  
21 from what I've told you, that if you vote for First Degree  
22 Murder the law does make the death penalty mandatory. I guess  
23 all I can ask you is, again, whether knowing that, would that  
24 just bar you from considering First Degree Murder under any  
25 circumstances?

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A. Yes.

Q Okay.

A. And this is disappointing to me because I didn't want to avoid this trial or this --

THE COURT: Well, let me ask Counsel. Do you want to challenge the juror? The State?

MR. THOMAS: Yes, Your Honor.

THE COURT: Do you resist the challenge?

MR. ROBINSON: No resistance, Your Honor.

THE COURT: We appreciate your frankness. I know it's a difficult thing, Mr. Etherton.

THE WITNESS: I hate to take any more of your time, but, the defendant is charged with First Degree Murder?

THE COURT: Yes, two counts.

THE WITNESS: Is there a possibility that the verdict could come up with several verdicts? Could the jury come up with several verdicts, one of several?

THE COURT: Oh, yes, there will be although this is the charge, yes.

THE WITNESS: That's confusing, but --

THE COURT: Under the law I think you are subject to challenge, Mr. Etherton, we again appreciate very much your honesty here and frankness and that's what we wanted you to do, you were and we appreciate it.

You will be excused, then, Mr. Etherton. We don't

1 know when you have to appear next, you will be subject to call  
2 by the Jury Commissioner. We appreciate your appearance here  
3 this morning. Thank you.

4 I would ask you not to discuss the questioning  
5 here with any of the other jury members if you happen to run  
6 into any members of the jury panel.

7 We'll take our noon recess at this time. We'll  
8 ask those jurors who are still in the jury room to come back at  
9 1:30 and, then, if the Bailiff can go over and announce to the  
10 other jurors that they will have to appear at 1:30. We are in  
11 recess, but tell them they will have to come back at 1:30.

12 (Noon recess taken.)  
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1           WALLACE, IDAHO, MONDAY, OCTOBER 6, 1975, 1:30 P.M.

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THE COURT: I might advise Counsel that I've received notification of the doctor for Mrs. Schuler, Juror No. 100, she has a medical problem that would render jury service dangerous to her health so I have excused her.

8

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11

MR. ROBINSON: Your Honor, while we are on the record but without a prospective juror being here, I noticed in my list that there were a number of jurors that were not called this morning.

12

13

14

THE COURT: Yes, I think there were several that were excused at the last moment that weren't checked off of our list.

15

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17

THE CLERK: I can give you the ones at a recess if you like, Mr. Robinson, if you'd like to know what they are. Number ten --

18

19

20

MR. ROBINSON: Fredericks?

THE COURT: No, ten. Helen Fredericks is the first one.

21

22

23

MR. ROBINSON: Ten is Mr. Burns.

THE CLERK: Yes, and 25 you have checked off, don't you?

24

25

MR. ROBINSON: Yes, Dickey.

THE COURT: We didn't call 31.

1 MR. ROBINSON: Helen Fredericks was excused?  
2 THE CLERK: Yes. The next one I have marked off is  
3 Connie Hill, Hinman, number 46.  
4 MR. REMAKLUS: Is 46 excused also?  
5 THE COURT: Yes.  
6 THE CLERK: And number 69 --  
7 MR. ROBINSON: You say that Connie Hill was?  
8 THE CLERK: Yes.  
9 MR. REMAKLUS: Sixty-nine was not called?  
10 THE CLERK: She was excused this morning.  
11 MR. REMAKLUS: Thank you.  
12 THE CLERK: And 100 you got, okay.  
13 MR. ROBINSON: Your Honor, for the record I would like  
14 to advise the Court that Mr. Creech tells me that on news  
15 broadcasts during the lunch hour this matter, at its commencement,  
16 was reported and erroneously the reporter was saying that the  
17 two deaths were by shotgun blasts. Not that it's going to make  
18 this much difference, however, I'd like the record and the  
19 Court to be kept advised of these circumstances as we move along.  
20 THE COURT: Well, I told the jurors that the news  
21 reports would probably be inaccurate so I think they expect that.  
22 MR. THOMAS: Your Honor, before we call the next juror,  
23 I wonder if we might just mention one question with respect to  
24 Mr. Robinson's examination to the past witness, some questions  
25 of juror -- rather, some question was raised, or asked, about

1 witchcraft and Satanic Cult knowledge. The Court has, of  
2 course, ordered that nothing be put in by way of evidence  
3 relating to Satanic Cults or witchcraft or irrelevant matters  
4 without preliminarily submitting that information to the Court  
5 for a determination.

6 I think we would raise the objection that these  
7 things fall within that sphere of that order; that the jury  
8 should not be exposed to the idea that this case, somehow,  
9 involves itself with witchcraft or Satanic Cults.

10 THE COURT: What is the purpose of that question?  
11 I understand your theory on evidence, but I don't understand  
12 the theory on qualification to sit as a juror, Mr. Robinson?

13 MR. ROBINSON: My purpose, Your Honor, in asking what  
14 their knowledge of this witchcraft circumstance that  
15 apparently has been a matter of great concern, a lot of  
16 conversation in this area, is to determine whether or not I do  
17 or do not have a juror that is overly superstitious.

18 THE COURT: I think that's a proper subject of inquiry.  
19 So, the objection is overruled.

20 I think Mr. Schermanson is next.  
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JOE SCHERMANSON,  
a prospective juror herein, having been first duly sworn, took  
the stand and testified as follows:

VOIR DIRE EXAMINATION

BY THE COURT:

Q Mr. Schermanson?

A Yes, sir.

Q I'm going to ask you a few questions,  
Mr. Schermanson, and then the attorneys will each ask you some  
questions.

A All right.

Q Everything that takes place up here in court has  
to be reported by the Court Reporter so it will be necessary  
for you to answer audibly so that he can hear your answers and  
the Court Reporter can record it.

A All right.

Q I want to advise you first that this trial may  
last three weeks. Of course, we don't know for sure how long  
it will last.

A Correct.

Q It might be less than that or it might be more,  
but that's our reasonable estimate at this point.

After the jury has been completely selected and  
sworn to try the case and we actually start the actual trial,

1 the jurors will be what we call sequestered; which means they  
2 wouldn't be able to go home at night, they will be housed in a  
3 motel and have to be taken to a restaurant for their meals  
4 together and things like that.

5 Bearing those things in mind, I'm wondering if  
6 there's anything in your personal life or your home situation  
7 or any work situation that would make it impossible for you to  
8 do this, or to work an extreme hardship for you. I use the  
9 word "extreme" because I'm sure everyone will be inconvenienced  
10 and won't be convenient for anyone.

11 A. I understand that. I understand that there's a  
12 couple things, one thing I have quite a little bronchial  
13 problem and another thing that -- all that I have at home is  
14 one sister and she's older than myself and it would work quite  
15 a hardship for any length of time on her.

16 Q. Would this bronchial problem you have, do you think  
17 that would be aggravated by not being able to go home and --

18 A. Yes, it is. I've been doctoring it now for quite  
19 some time and Nettinger, my doctor, seems to be, more or less,  
20 up a tree and it's very aggravating and, at times, why, just  
21 hardly do anything.

22 THE COURT: Counsel be willing to excuse  
23 Mr. Schermanson?

24 MR. REMAKLUS: Yes, Your Honor.

25 MR. ROBINSON: I'd like the record to show further on

1 Mr. Schermanson's questionnaire, Your Honor, he did make  
2 mention that he does have a hearing problem. Based upon that,  
3 along with what he has said, we would join in the excuse.

4 THE COURT: All right, we appreciate your being here,  
5 Mr. Schermanson. We will excuse you, then, from further  
6 service and I think, in view of this medical problem, I'll  
7 probably excuse him from any further jury service. If you want  
8 to, you can go over to where they collect their fees.

9 All right, you will be excused, then, at this  
10 time, Mr. Schermanson. You can go out this door. If you will  
11 not discuss this with any of the other jurors.

12 THE WITNESS: All right.

13 THE COURT: Virginia Budiselic.

14  
15 VIRGINIA S. BUDISELIC,  
16 a prospective juror herein, having been first duly sworn, took  
17 the stand and testified as follows:

18  
19 VOIR DIRE EXAMINATION

20 BY THE COURT:

21 Q Mrs. Budiselic, is that the correct pronunciation?

22 A Yes.

23 Q I want to ask you just a few questions and then  
24 the attorneys might want to ask you some.

25 A Okay.

1 Q All these proceedings have to be recorded by the  
2 Court Reporter here, so your answers need to be audible and  
3 loud enough so he can hear them.

4 A Okay.

5 Q Let me first advise you that, of course, we don't  
6 know exactly how long this trial will take, reasonable  
7 estimate, I think, is three weeks.

8 Now, once the jury is actually chosen and sworn to  
9 try the case and we actually start the trial the jury will be  
10 sequestered; which means the jurors won't be able to go home  
11 on recesses at night, they will be housed in a motel and have  
12 their meals in restaurants together.

13 Bearing this in mind, I'm wondering if there's  
14 anything in your personal life or home situation and work that  
15 would make it impossible for you to meet these requirements, or  
16 create an extreme hardship for you?

17 I know it's going to be inconvenient for everyone  
18 so that's why I say "extreme hardship". Anything that you feel  
19 would be -- make it impossible for you to serve under these  
20 conditions?

21 A Unless I couldn't find a babysitter would be the  
22 only problem.

23 Q How old are your children?

24 A Four, six and fifteen.

25 Q Do you have relatives you could call on?

1           A.     No.

2           Q.     Do you have a regular babysitter? Do you work?

3           A.     No.

4           Q.     You are at home? I see.

5           A.     That would be my only problem because I don't have

6 any relatives within 2,000 miles and I don't really know

7 anybody that close is why I don't work, to take care of the

8 boy.

9           Q.     Right now you don't have any -- the 15-year old,

10 I take it, goes to school during the day?

11          A.     Yes.

12          Q.     Six-year old too, probably?

13          A.     Yes.

14          Q.     Do you have any prospect at all of a babysitter

15 that could serve on a long-term basis, steady like that?

16          A.     I sure don't.

17          Q.     You don't have any at this time?

18          A.     (No audible response.)

19          THE COURT: Counsel want to inquire further?

20          MR. REMAKLUS: No.

21          MR. ROBINSON: My feeling would be that the hardship

22 would be two-fold and especially on the youngsters.

23          THE COURT: All right. We'll excuse you, then,

24 Mrs. Budiselic. You will be on call for further jury service

25 on, perhaps, shorter trials, but the Jury Commissioner will



1 notify you as to any appearances you have to make.

2 We appreciate your appearance this morning, we'll  
3 excuse you and ask you not to discuss this with any other  
4 jurors. You are excused, you can leave if you want to.

5 THE WITNESS: Thank you.

6 THE COURT: Philip Ruff.

7

8 PHILIP H. RUFF,

9 a prospective juror herein, having been first duly sworn, took  
10 the stand and testified as follows:

11

12 VOIR DIRE EXAMINATION

13 BY THE COURT:

14 Q Mr. Ruff?

15 A Yes.

16 Q Is that the correct pronunciation?

17 A Yes.

18 Q Mr. Ruff, I want to ask you a few questions and,  
19 then, each attorney might want to ask you some questions. These  
20 proceedings have to be reported by the Court Reporter, so it  
21 will be necessary for you to answer audibly and loudly enough  
22 for him to hear you.

23 A All right.

24 Q I want to first advise you, Mr. Ruff, we, of course,  
25 at this point don't know exactly how long this trial will take.

1 The best estimate we have right now, which is probably a  
2 reasonable estimate, will be that it will take three weeks,  
3 approximately.

4 Now, after the jury is sworn to try the case and  
5 actually -- the trial actually starts, we do what we call  
6 sequester the jury; which means the jurors will not be able to  
7 go home at night or recess, they will be housed in a motel and  
8 take their meals at restaurants under the supervision of the  
9 Bailiffs.

10 So, bearing this in mind, is there anything in your  
11 personal life or your home situation or your work that would  
12 make it impossible for you to meet these requirements, or  
13 create an extreme hardship? I know it's not going to be  
14 convenient for anyone, so I'm not asking whether it's  
15 convenient, that's why I phrase it in terms of "extreme  
16 hardship" or impossibility.

17 A. No, I don't know of anything there. That would  
18 be inconvenient, but --

19 Q. Do you feel you could meet these requirements?

20 A. I could.

21 Q. Turning to another subject, under our law,  
22 Mr. Ruff, a defendant in a criminal action is presumed to be  
23 innocent unless his guilt is proved beyond a reasonable doubt  
24 by the Prosecution. Now, this principle of law means that at  
25 this stage of the proceedings, before any evidence has been

1 presented and before there's been any proof at all, that the  
2 defendant here, Mr. Creech, must be considered to be innocent.

3 Now, are you able at this time and in good  
4 conscience to give Mr. Creech this benefit of this and consider  
5 him right now as he sits here --

6 A. I've read some on this and I'm not --

7 Q. Let me pursue that with you a little bit, then,  
8 Mr. Ruff.

9 Can you tell me or give me an idea when, and  
10 perhaps how many times you've read articles about this, or  
11 heard about it?

12 A. I'd say, probably twice and that's been a month  
13 ago. I don't remember just when.

14 Q. I don't want specific dates, within the past  
15 couple of months, would you say?

16 A. Yes. I think the last time was about a month ago  
17 and once --

18 Q. Were these newspaper articles?

19 A. Yes.

20 Q. Anything on radio or TV?

21 A. No.

22 Q. Just two newspaper articles is what we're talking  
23 about, then?

24 A. (No audible response.)

25 Q. We'd like you, at this point, then, to search your

1 memory as best you can and tell us, just summarize for us what  
2 you can actually remember that you read in those articles.

3 A. I have tried to remember before because -- well,  
4 one reason why I remember having read about it was that, oh,  
5 about the time I got the questionnaire from the Court concerning  
6 jury duty, that I had seen something on -- well, that there was  
7 a murder trial coming up which made me remember that -- having  
8 read that and something on a change of venue on this. But, I  
9 can't remember that much about it.

10 Q. All you remember specifically at this point is  
11 that there was a murder trial coming up and there was something  
12 about a change of venue, or change the place of trial, is that  
13 right?

14 A. Yeah, and I had read about the case when the  
15 arrest was made.

16 Q. What do you remember reading at that time?  
17 Do you remember any of those facts?

18 A. That -- I just don't right now remember.

19 Q. So, the only thing you specifically remember -- do  
20 you remember reading a story about it but you can't remember  
21 the contents of the story; is that what you are telling us?

22 A. Nope.

23 Q. Let me ask -- getting back to the former point,  
24 then, maybe ask it a little different way. Have you based, on  
25 what you've heard or read about the case, formed an

1 unqualified opinion at this time as to the guilt or innocence  
2 of the defendant?

3 A. I don't think I've reached an opinion, no.

4 Q. You don't have a fixed opinion?

5 A. No.

6 Q. Perhaps this other question I asked you was a  
7 little bit confusing. You see, what this does is what we call  
8 the burden of proof in a case. I suppose it's possible to have  
9 a system where you'd start out saying that the defendant is  
10 guilty and make him prove his innocence. That isn't our system,  
11 you see? Our system goes the opposite way and says we start  
12 out with him being innocent and the State has to prove him  
13 guilty and that has to be beyond a reasonable doubt.

14 So, I'm not -- the question was asked you whether  
15 you've weighed evidence and decided he's innocent; whether  
16 you're willing to go into this with a completely open mind and  
17 recognizing, then, that under our system the State has to prove  
18 his guilt, to accept the fact that until that's done he's  
19 innocent, that's what that question is. Now, do you think you  
20 can do that?

21 A. At the time of reading about it I felt that  
22 Mr. Creech was -- sounded like he was guilty. Now, whether or  
23 what effect this would have on any biased opinion starting in,  
24 I'm not really sure.

25 Q. Well, you are probably the only one that can really

1 search your conscience and your memory and your mind and tell  
2 us this, Mr. Ruff. But, let me ask you this:

3 Do you think that any opinion you've formed when  
4 you first read that, even though you can't remember the facts  
5 that made you form that opinion, do you think you could lay  
6 that entirely aside and follow the instructions of the Court  
7 and decide this case strictly on the evidence you receive here?

8 A. I think I could.

9 Q. In other words, this opinion isn't so fixed that  
10 Mr. Creech would have to come forward with evidence of his  
11 innocence to remove it, then?

12 A. No.

13 Q. You'd still put the burden on the State to prove  
14 him guilty beyond a reasonable doubt?

15 A. Yes.

16 Q. And not put any burden on him to prove his  
17 innocence?

18 A. Correct.

19 Q. Turning to another matter, Mr. Ruff, under our  
20 Idaho law **neither** the jury nor the Judge, the Court has any  
21 discretion as to the penalty to be imposed for First Degree  
22 Murder. The law makes the death penalty mandatory in Idaho for  
23 First Degree Murder.

24 Now, knowing this to be the law, do you have any  
25 personal beliefs or feelings about the death penalty which would

1 prevent you from fairly considering the evidence and law  
2 bearing upon a charge of First Degree Murder?

3 A. Yes, I do. I personally don't agree with the  
4 death penalty.

5 Q. All right. Let me ask you another question, then.  
6 Would that personal belief -- is that so strongly fixed that it  
7 would prevent you from finding the defendant guilty of First  
8 Degree Murder under any state of the evidence; knowing that if  
9 you did find him so guilty he'd be subject to an automatic  
10 death penalty?

11 A. I suppose that there could be circumstances where  
12 I would and could vote in favor of it.

13 Q. You recognize that you could still consider that  
14 charge under a certain state, proved evidence?

15 A. Yes, I could.

16 Q. In spite of your feeling personally objecting to  
17 the death penalty?

18 A. Yes.

19 Q. Just a couple general questions. Do you know of  
20 anything that would prevent you from accepting the law as  
21 stated to you by the Court in this case; understanding the  
22 jury is the judge of the facts and the Judge decides what the  
23 applicable law is?

24 A. No, I don't know that I do.

25 Q. Other than the things we've already explored, do

1 you know of anything else that I haven't asked you about that  
2 would prevent you from being a fair and impartial juror in this  
3 case to both sides?

4 A. No, I don't.

5 THE COURT: All right, I'll let Counsel present some  
6 questions.

7  
8 VOIR DIRE EXAMINATION

9 BY MR. THOMAS:

10 Q. Mr. Ruff, just to clarify in my mind what you said  
11 a moment ago, was it your position that there could be  
12 circumstances where, if the evidence showed the defendant was  
13 guilty of First Degree Murder, you could vote for a conviction;  
14 even knowing that that would call for the imposition of the  
15 mandatory death penalty?

16 A. Yes, I could.

17 Q. Would that interfere with your ability to judge  
18 the case in any way, you think, your reservations about the  
19 death penalty?

20 In other words, do you think you could still keep  
21 an open mind about the evidence and if it shows the defendant  
22 was guilty of First Degree Murder, could you still keep an  
23 open mind about voting for conviction?

24 A. I think I could.

25 Q. Do you have any reservation about that?



1 A. Well, as I stated, I'm not in favor of the death  
2 penalty except -- well, there may be some circumstances.

3 Q. You would not refuse those to consider voting for  
4 conviction if the evidence showed first degree murder?

5 A. No, I could vote for it.

6 Q. Would it make any difference to you in weighing  
7 your decision or a first degree murder verdict that in fact the  
8 jury has no responsibility for the penalty and that's not  
9 something you are to consider?

10 A. Oh, know, that's true. The jury doesn't decide  
11 what the penalty is.

12 Q. Would you then be willing to put questions of the  
13 penalty out of your mind in determining the question of guilt  
14 or innocence?

15 A. Yes.

16 Q. Have you recently, Mr. Ruff, read any general  
17 articles on legal matters or trial articles, books; anything  
18 of that kind?

19 A. What do you mean by "legal matters"?

20 Q. Oh, biographies or autobiographies of famous  
21 lawyers, famous trials?

22 A. Nothing lately.

23 Q. Have you read anything like that that you think  
24 would have any influence on you in this case?

25 A. No.

1           Q     I think, Mr. Ruff, that the Court will instruct  
2     you, if you serve on this jury, at some point or another, that  
3     the State has to prove its case beyond a reasonable doubt but  
4     that doesn't mean that every fanciful or imaginary doubt which  
5     might be conjured up constitutes a reasonable doubt.

6                     Do you feel that you understand the difference  
7     between a reasonable doubt and a doubt that might simply be  
8     drummed up?

9           A     Yes.

10          Q     You are willing to follow the Court's instructions  
11     about reasonable doubt as the Court gives them to you?

12          A     Yes.

13          Q     Do you have any relatives, family members or  
14     close friends who have ever been convicted of any crime?

15          A     Nope.

16          Q     Is there anything of that nature which would cause  
17     you to feel that you might not be able to be completely  
18     impartial in deciding this case?

19          A     No.

20          MR. THOMAS: Pass for cause, Your Honor.

21          MR. ROBINSON: May I proceed, Your Honor?

22          THE COURT: Yes.

23

24

25

VOIR DIRE EXAMINATION

BY MR. ROBINSON:

Q Mr. Ruff, I notice by your questionnaire you are a Forester with the U.S. Forest Service; is that correct?

A. Yes.

Q How long have you been with them?

A. About 12 and a half years.

Q All right. And would you just, generally, give me the formal education that you've attained for this occupation?

A. I have a Bachelor of Science degree in Forestry.

Q Where?

A. From the University of Montana.

Q All right.

A. And some graduate school credits.

Q And where were those taken?

A. That was University of Montana also.

Q Now, I also notice, according to your questionnaire, that in the summertime you are located about 36 miles from here, in the wintertime 105. What does that mean?

A. I live in the same house year round, but you can't get here over the hill in the wintertime.

Q I see. Now, you are married and you have two children, 12 and 15?

A. Yes.

Q And they reside in this house that is 36 miles

1 away in the summertime and 105 in the winter?

2 A. Yes.

3 Q. Is this quite an altitude that's going to suffer  
4 early snow?

5 A. The road between here and Avery is quite high.  
6 It's not kept open in the wintertime.

7 Q. I see.

8 A. So, to get there in the wintertime from here you  
9 have to go towards Coeur d'Alene and, then, south and, then,  
10 come back around.

11 Q. So, when you answered Judge Durtschi's questions  
12 about serving here for a protracted long-term trial working any  
13 hardship, you took that into consideration also; did you?

14 A. Oh, if we were here, that is --

15 Q. Yeah.

16 A. -- I wouldn't be commuting and I would be able to  
17 get home at the end.

18 Q. Um-hmm.

19 A. It would be a little further.

20 Q. All right. Now, Mr. Thomas asked you whether or  
21 not any relative, members of your family been convicted of any  
22 crimes. Have any members of your family, relatives, good  
23 friends been victims of any crimes?

24 A. No.

25 Q. Now, you were in court this morning across the

1 street when all 123 or thereabouts were talked to by the  
2 Court, were you not?

3 A. Yes.

4 Q. And were you present when Mr. Creech, the  
5 gentleman sitting alongside me was brought into the courtroom  
6 in the company of two police officers?

7 A. He was in the courtroom when I arrived.

8 Q. All right. And was already seated at counsel  
9 table?

10 A. Well, I take that back. Mr. Creech was being  
11 brought into the courthouse on the lower floor. When I arrived  
12 there, by the time I got into the courtroom he was already  
13 there.

14 Q. All right. And, Mr. Ruff, did you recognize the  
15 fact that he was handcuffed to a Deputy Sheriff?

16 A. Yes.

17 Q. All right. As a mere fact that Mr. Creech is  
18 incarcerated, being held in custody, form in your mind any  
19 presumption, or assumption that he must be guilty?

20 A. No, I don't think so.

21 Q. And by the law enforcement being here, the  
22 Deputies in front of the rail on both sides, does that raise  
23 in your mind that Mr. Creech is a dangerous person and needs  
24 close supervision?

25 A. No, I don't think that necessarily means that.

1 Q Okay. Then, even though these things are present  
2 and visual to you, do you still feel, if selected as a juror,  
3 that you could go with our system's maxim of law that a person  
4 accused of a crime is innocent until proven guilty beyond a  
5 reasonable doubt?

6 A Yes, I believe so.

7 Q Now, Mr. Ruff, you appear to me to be a very  
8 polite gentleman and if I am making the right assumption you  
9 are fairly chivalrous to our ladies in our society; am I  
10 correct?

11 A I guess so.

12 Q All right. Now, if you are serving on a jury that  
13 has ladies on that jury and the testimony brings about  
14 profanity, terms of profanity, course, harsh words, will this  
15 cause you some prejudice towards the defendant because those  
16 words were emitted and were a part and parcel of the testimony?  
17 In other words, would you be raising up in protection of the  
18 ladies, not physically or openly, but back in your mind?

19 A It would bother me.

20 Q Now, in addition to that, Mr. Ruff, it may come to  
21 pass that there will be introduced into evidence photographs  
22 of the deceased victims that are somewhat grotesque and  
23 gruesome in appearance. Would this fact in itself cause you  
24 prejudice against the person accused, Mr. Thomas Eugene Creech?

25 A No, I don't think so.

1 Q Now, when you say that use of these other terms  
2 would bother you, would you be able to objectively, unbiasedly  
3 and unprejudicially look at those circumstances as they are  
4 testified to and set them aside in your mind because of your  
5 oath as a juror; that you are trying this case based upon the  
6 facts and the evidence?

7 A Yes, I believe I could.

8 Q Are you affiliated with any organized church?

9 A Not a member, no.

10 Q Do you believe in God?

11 A Yes.

12 Q Do you believe there is a Satan?

13 A I'm really not sure.

14 Q Have you ever been baptized yourself?

15 A Yes.

16 Q And how long have you lived in this area,  
17 Mr. Ruff?

18 A Almost five and a half years in Avery and  
19 previous three years in Grangeville, Idaho, just a little ways  
20 further south.

21 Q Yes, um-hmm, Idaho County?

22 A Yes.

23 Q During your time that you've been here, have you  
24 been a party to conversations or heard rumors regarding  
25 witchcraft here in Silver Valley area?

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A. Yes.

Q Would you tell us about that?

A Okay. I'm associated with the Scouts and this came up a number of times last summer at the Scout Summer Camp and other meetings. Some of the people that I know from this area, Scouts talking about it, devil worshipers, but, you know, as far as details of the conversations --

Q What was stated, if you recall, regarding their activities?

A Well, that you better stay away from them. They were -- there was a rumor at one time of some devil worshipers in the St. Joe Valley.

Q Where is that located?

A That's the river that I live on; which is right south of here.

Q All right.

A And -- well, this had some of the boys quite nervous on their -- couple trips up the river.

Q What was your impression of all this information as you weighed it and evaluated it?

A As far as the presence of devil worshipers along the St. Joe River? I didn't believe the report that -- at first and, then, heard it again and, then, it turned out that it was just a rumor; to the best information that I got.

The purpose that it served was, you know, ghost



1 stories around a campfire.

2 Q Beg your pardon?

3 A It was to serve for a ghost story around the  
4 campfire.

5 Q Such as we all went through when we were  
6 youngsters and went camping; is that what you were referring  
7 to?

8 A Yeah.

9 Q What newspapers and periodicals do you subscribe  
10 to?

11 A Newspapers? The Spokane Review and the  
12 St. Maries Gazette, it's a weekly. News periodicals, Time,  
13 get Newsweek not a regular basis, but pick it up at newsstands.

14 Q Was it the Spokane Review -- did you have  
15 something else to add?

16 A I can't remember any others right off.

17 Q All right. Was it from the Spokane Review in the  
18 last month or so that you saw some articles regarding the  
19 involvement of this trial?

20 A I'm not sure whether it was or not. I occasionally  
21 pick up a few other newspapers also.

22 Q Boise Statesman?

23 A No, I haven't seen a Boise paper in over a year.  
24 But, Lewiston paper, well, we get the evening paper from  
25 Spokane sometimes, I can't remember the name of it.

1 Q All right. Searching back in your memory,  
2 Mr. Ruff, to last November, December and the first two or  
3 three months of this year, do you recall whether or not there  
4 was anything that you heard about this case?

5 A I said earlier I did read about it a couple times  
6 but I can't even remember just when it was.

7 Q Mr. Ruff, have you been involved in the  
8 conversations where you've discussed the Thomas Eugene Creech  
9 case with other people?

10 A No, I don't believe so.

11 Q Has anyone discussed it in your presence and  
12 rendered an opinion, or their opinion?

13 A No.

14 Q If selected as a juror, if the facts in this case  
15 show the defendant to be either not guilty or only guilty of  
16 a lesser offense than First Degree Murder, would it cause you  
17 any embarrassment to bring in a verdict that you find from the  
18 evidence and the instructions of the Court?

19 A No.

20 Q Now, knowing yourself, Mr. Ruff, better than  
21 anyone else here in this courtroom, I'll ask you whether or not  
22 there are any other circumstances in your life, other than  
23 what you've stated to us -- questions already asked you, that  
24 would cause you to think that you should not be selected as a  
25 juror to hear this case?

1           A.     Probably one -- well, I see it's not a tattoo, I  
2     thought it was a tattoo on the forehead.

3           Q.     That is a mark. There is a tattoo on Mr. Creech's  
4     right high cheek and he has a tattoo on his hand and he has  
5     other tattoos on his arms. Is there something in that regard?

6           A.     Oh, this would induce some prejudice in my mind.

7           Q.     Would you tell us about them, please.

8           A.     That -- well, in what I've read about various  
9     cults that use such marks that I just think that someone who  
10    ascribes to -- well, what do you call it, a worship of Satan  
11    or any other term, that this is not something that I believe  
12    in and I think is wrong and this could cause a prejudice.  
13    This visual emblems which I associate with some things.

14          Q.     All right. And taking you and what you have  
15    stated most seriously, would you go so far as to say that you,  
16    as a human being, would render a decision as a juror against  
17    such a person whether they actually were guilty of the crime  
18    they are charged with or not?

19          A.     No, I don't think it would affect the verdict  
20    that I would reach; except that some evidence I might not  
21    fully believe.

22          Q.     Merely for the fact that they do have the tattoos  
23    and may be members of a cult?

24          A.     Well, again, depending upon the nature of the  
25    evidence it might denote membership in a cult of this nature,

1 it might make me not believe part of the evidence.  
2 Q The mere fact that they do have the tattoo marks  
3 and are a member of a cult, that is what you are saying?  
4 A Yes. Like I say, just the visible marks, emblems.  
5 Q Then, Mr. Ruff, may I ask you this: If this  
6 feeling you have that is one of prejudice, would that cause  
7 the person that you have a dislike, or prejudice against, to  
8 have to come forward with more evidence to prove themselves  
9 to you than an ordinary other person might?  
10 A Yes, it could. I would -- okay, maybe to explain  
11 it a little further. For instance, if I had someone working  
12 for me that belonged to some such organization I'm sure that  
13 I would set a much higher standard of performance that I  
14 would require.  
15 Q I appreciate your candor and your frankness,  
16 Mr. Ruff.  
17 MR. ROBINSON: Your Honor, I do challenge for cause.  
18 MR. THOMAS: We resist the challenge.  
19 THE COURT: Do you want to ask some further questions?  
20 MR. THOMAS: Yes.  
21  
22  
23  
24  
25

1 FURTHER VOIR DIRE EXAMINATION

2 BY MR. THOMAS:

3 Q Mr. Ruff, is it correct that your feeling about  
4 the possibility that tattoos on the defendant might prejudice  
5 you relate to your feeling towards him and not towards any  
6 preconception you might have about evidence?

7 A I'm not sure that I understand what you mean.

8 Q Would you still require, regardless of the tattoos,  
9 would you still require the State to prove its case to your  
10 satisfaction beyond a reasonable doubt before you would vote  
11 to convict the defendant?

12 A Yes, I would.

13 Q Would the tattoos affect you in the performance  
14 of that function in any way?

15 A No. What I would worry about would be the  
16 effect of my personal prejudice on the defendant's rebuttal  
17 to the State's evidence.

18 Q Would you tend to shift the burden of proof to  
19 the defendant, in your mind, by virtue of the fact that he has  
20 these tattoos?

21 In other words, would you require him, just  
22 because he has the tattoos, to present evidence of his  
23 innocence that you would not expect him to present otherwise?

24 A No.

25 Q Would it be fair to say, then, that you have some

1 prejudice against the defendant as a result of the tattoos,  
2 but that you still intend to keep an open mind about the  
3 evidence in the case as it relates to the charges?

4 A. I would do my best to do so.

5 Q. Do you feel that you could perform that function?

6 A. I think I could.

7 MR. THOMAS: I have no further questions, Your Honor,  
8 and I believe that this -- the witness has -- juror has  
9 demonstrated sufficiently to rebut the challenge for cause.

10 THE COURT: Want to question further, Mr. Robinson?

11 MR. ROBINSON: Yes, Your Honor.

12  
13 FURTHER VOIR DIRE EXAMINATION

14 BY MR. ROBINSON:

15 Q. Mr. Ruff, as I say, I appreciate your candor and  
16 your frankness with us and, then, in answer to the question  
17 Mr. Thomas asked you, do you think you could -- is there some  
18 doubt in your mind that you would have control of that  
19 prejudice?

20 A. Well, I think the prejudice is pretty difficult  
21 to completely control any if it's very deep seated. I don't  
22 know, perhaps by keeping this in mind I could not allow this  
23 to affect my judgment.

24 Q. And you would do your best not to, but are you  
25 sure that it wouldn't?

1 A. I could not be entirely sure.

2 Q. Then, if your presence on that jury, when finally  
3 empaneled, would you feel that the defense in this case and  
4 Mr. Creech in particular would have less than a 50-50 measure  
5 in the very beginning?

6 A. I think that he could.

7 Q. And he would have something in your mind to  
8 overcome first; is that correct?

9 A. Yes.

10 MR. ROBINSON: I renew my challenge, Your Honor.

11 THE COURT: Yes, I'm going to grant the challenge.

12 We appreciate your frankness, Mr. Ruff. We'll  
13 excuse you at this time. You will be subject to further call  
14 by the Jury Commissioner for other cases. We don't have a  
15 specific date when you do need to appear at this time, but at  
16 this time you may be excused.

17 We will ask you to not -- if you run into other  
18 members, not to discuss the questions here with them. You may  
19 step down.

20 Bring in Mr. Powell.

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ROBERT P. POWELL,  
a prospective juror herein, having been first duly sworn, took  
the stand and testified as follows:

VOIR DIRE EXAMINATION  
BY THE COURT:

Q Mr. Powell, I want to ask you a few questions and  
then the attorneys will ask you some questions.

All of these proceedings have to be reported by  
the Court Reporter, so, if you'll answer audibly and loudly  
enough so he can hear you, please.

First I want to advise you that while we don't  
know exactly how long this trial will take, it is estimated  
that, probably, a reasonable estimate is three weeks.

Now, after the jury is actually chosen and sworn  
to try the case and the trial actually starts, from that point  
on the jury will be sequestered; which means you will be housed  
in a motel and eat at restaurants under supervision by the  
Bailiffs and wouldn't be able to go home at night, or during  
recesses.

Now, bearing that in mind, is there anything in  
your personal life or home situation or work that would make  
it impossible for you to meet these requirements, or create  
what you would consider an extreme hardship?

I use the "extreme" terminology because I'm sure



1 it's not -- it's going to be inconvenient for everyone.

2 A No, sir.

3 Q You would be able to meet these requirements?

4 A Yes, sir.

5 Q Under our law, Mr. Powell, a defendant in a  
6 criminal action is, under our system, is presumed to be  
7 innocent until his guilt is established beyond a reasonable  
8 doubt. So, this means that as we sit here right now, without  
9 having any evidence at all, this principle of law requires that  
10 Mr. Creech must be considered innocent at this stage of the  
11 proceedings.

12 Are you able to, in full conscience, accept this  
13 principle and consider him to be innocent by the proceedings?

14 A Yes, sir.

15 Q Have you read or heard anything about this case  
16 in the newspapers or on radio or TV or from any other source?

17 A No, sir.

18 Q So, you just haven't heard a thing about this  
19 case?

20 A No, sir.

21 Q Have you had anything that's happened that's  
22 caused you to form any opinion as to guilt or innocence of the  
23 defendant at this point?

24 A No, sir.

25 Q I want to turn to another subject. Under our

1 Idaho law neither the jury nor the Judge has any discretion  
2 as to the penalty to be imposed for First Degree Murder. The  
3 law makes this -- the death penalty mandatory for First Degree  
4 Murder; that means the legislature has made that decision and  
5 the Court doesn't decide and neither does the jury.

6 The jury does decide whether the defendant is  
7 guilty or innocent of First Degree or a lesser degree of  
8 homicide or innocent.

9 Now, knowing that, if you were to render a verdict  
10 of First Degree Murder that the death penalty would be  
11 mandatory and automatic, would you have any personal beliefs  
12 or feelings about the death penalty which would prevent you  
13 from fairly considering the evidence of law bearing on the  
14 charge of First Degree Murder?

15 A. No, sir.

16 Q. Is there anything that you are aware of that  
17 would prevent you from following the instructions of the  
18 Court in the law in the case?

19 A. No, sir.

20 Q. You understand the jury has the function of trying  
21 to decide the facts and the Court decides what the law -- what  
22 law is applicable and instructs the jury on the law?

23 A. Yes, sir.

24 Q. And you could accept the Court's instructions?

25 A. Yes, sir.

1 Q Do you know of anything, whether I've asked you  
2 or not, that would prevent you from being a fair and impartial  
3 juror to both sides in this case?

4 A No, sir.

5 THE COURT: Counsel may inquire.

6  
7 VOIR DIRE EXAMINATION

8 BY MR. REMAKLUS:

9 Q Mr. Powell, how long have you lived around in  
10 this county?

11 A Approximately 14 years.

12 Q And where did you grow up?

13 A In Shoshone, Idaho. I was raised in Shoshone.

14 Q Um-hmm. What's your educational background,  
15 Mr. Powell?

16 A I've completed 12 years of elementary school and  
17 high school.

18 Q On this questionnaire here it says your occupation  
19 is a "stacker", "counter". Now, what do you do?

20 A I have since changed jobs since that application  
21 was prepared. I work as a mechanic's assistant for  
22 Sebenette Brothers in Osburn as a mechanic's assistant.

23 Q And this is on heavy equipment or automobiles, or  
24 trucks?

25 A Bigger trucks, heavy trucks.

1 Q Um-hmm. And what kind of business are  
2 Sebenette Brothers in?  
3 A Contracting to do concrete work and road building  
4 and things of this nature.  
5 Q And you just recently went to work for them; is  
6 that correct?  
7 A Yes, sir, about two weeks.  
8 Q I see. You have one child, ten years old, you  
9 got married at a pretty early age; didn't you?  
10 A Yes, sir, 19.  
11 Q Um-hmm. Have you ever been a juror before?  
12 A No, sir.  
13 Q Have any of your friends or your relatives been  
14 involved in any kind of litigation?  
15 A No, sir, not that I know of.  
16 Q You understand that if you are selected here as  
17 a trial juror that the Judge will read you the instructions  
18 and that will contain the law and that you have to follow his  
19 instructions as to the law of the case?  
20 A Yes, sir.  
21 Q That would be part of your duty to do that. Of  
22 course, as a trial juror, it would be up to you to determine  
23 guilt or innocence; this would be your function.  
24 Now, in the event that the State meets the high  
25 burden of proof, that is beyond a reasonable doubt, can you be

1 objective and look at the evidence and return a verdict that  
2 you think is correct as based on that evidence without being  
3 sorry for someone or being influenced by this mandatory death  
4 penalty?

5 A Yes, sir, I think I could.

6 Q That's a tough question to answer.

7 A I know.

8 Q Mr. Powell, could you be away from your work -- I  
9 mean, have you -- you can make proper arrangements so being  
10 away from your job would not be a problem; is that correct?

11 A I believe so, yes.

12 Q Um-hmm. Your health is apparently good; isn't it?

13 A Yes, sir.

14 Q Does your -- your wife is a student; is that  
15 correct?

16 A Yes, sir.

17 Q Where is she?

18 A She's attending North Idaho College, nursing  
19 program.

20 Q Over at Coeur d'Alene?

21 A Yes, sir.

22 Q Now, does she come out every day?

23 A Yes, sir, her and another girl share rides.

24 Q Um-hmm. So, because of that you've had to make  
25 proper arrangements for the kids anyway, haven't you?

1           A.    Oh, yes, sir. I work afternoon shifts and she's  
2           gone during the day and kids are in school. So, actually,  
3           there's nobody home during the day.

4           Q.    Um-hmm. Now, if you are on the jury can proper  
5           arrangements be made for your children?

6           A.    Yes, sir. They've been schooled in that effect.

7           Q.    Fine. Do you have any -- this is a serious case.  
8           Do you have any reservations in your own mind about sitting  
9           here as a trial juror?

10          A.    No, sir.

11          Q.    You are willing to accept the responsibility?

12          A.    Yes, sir.

13          Q.    In the instructions that you will receive from  
14          the Court I'm sure the Judge will instruct you about reasonable  
15          doubt and defining reasonable doubt. If you are selected as a  
16          trial juror, you would listen closely to those instructions,  
17          I assume?

18          A.    Yes, sir.

19          Q.    And if we get into a situation where there is  
20          some doubt, or people say a "shadow of a doubt" do you think  
21          that you could be guided by the Judge's instructions and  
22          separate that from a reasonable doubt?

23          A.    Yes, I think so.

24          MR. REMAKLUS: I'll pass this juror for cause, Your Honor

25          MR. ROBINSON: May I proceed, Your Honor?

1 THE COURT: Yes.

2

3 VOIR DIRE EXAMINATION

4 BY MR. ROBINSON:

5 Q Mr. Powell, have any of your relatives, members  
6 of your family, close friends, been victims of any crimes  
7 committed against them?

8 A No, sir, not that I know of.

9 Q Have any of those same persons, relatives, close  
10 friends, relations, been convicted or charged with any crimes?

11 A No, sir.

12 Q And you've lived for the entire -- not the entire,  
13 25 years of your 30 years here in the State of Idaho?

14 A Yes, sir.

15 Q Where did you come from?

16 A Shoshone County, Shoshone, Idaho, it was Lincoln  
17 County.

18 Q I see. Well, then, there's a period of time after  
19 your birth here in Idaho that you were living five years  
20 elsewhere?

21 A Yes, sir. I was actually born in the State of  
22 Ohio.

23 Q Where in Ohio?

24 A Cleveland and we moved here when I was about four  
25 and a half to Richfield, Idaho; which is about seven miles from

1 Shoshone and ---

2 Q All right.

3 A From there I went to St. Maries, which is not too  
4 far from Wallace here, and I graduated here at Wallace.

5 Q All right. And you have a group of relatives  
6 back in Cleveland?

7 A Very distant.

8 Q Very distant?

9 A Yes, sir.

10 Q In other words, since you were four or five years  
11 of age you haven't returned to the Ohio area much?

12 A No, sir, I haven't.

13 Q Your knowledge, you are familiar with what  
14 Ohio is, such places as Hamilton, Cincinnati, Dayton; those  
15 areas?

16 A No, I had a grandfather that lived in  
17 Hillsboro, but, actually it was just a mailing address more  
18 than anything else.

19 Q All right. And what newspapers do you subscribe  
20 to?

21 A Spokane -- Spokesman Review and I only take the  
22 Sunday paper. I don't take the daily paper.

23 Q All right. Do you get the local papers of either  
24 Wallace or Kellogg?

25 A No, sir. If we happen to get one my wife gets



1 one from the next door neighbor.

2 Q I'm not sure whether Osburn has its own publication  
3 or not; does it?

4 A No, sir, I don't think it does.

5 Q And at your place of employment do you have other  
6 newspapers available to you that you look at also?

7 A No, sir -- well, there is some there but the  
8 things that we use them for is to cover up things for when you  
9 are spray painting and things like that.

10 Q Apparently not for reading; is that correct?

11 A No, sir.

12 Q Now, what, if anything, do you know from either  
13 reading or discussions you've been involved in about this case  
14 before coming here today?

15 A Other than the fact that I might be called to go  
16 on this case, nothing.

17 Q No one has ever approached you in conversation or  
18 otherwise about the State of Idaho versus Thomas Eugene Creech  
19 case?

20 A No, sir.

21 Q As a matter of fact, before being selected for  
22 jury duty, were you even aware that this case was going to be  
23 transferred from Valley County to Shoshone County?

24 A I had heard that it might be up here but other  
25 than that, no, sir.

1 Q But no details as far as what occurred?  
2 A No, sir.  
3 Q Okay. And what church are you affiliated with?  
4 A Methodist, but we usually go to Lutheran here in  
5 Osburn.  
6 Q Is this regular attendance?  
7 A Periodic, yes, sir.  
8 Q Do you believe in God?  
9 A Yes, sir, I do.  
10 Q Do you believe there is a Satan?  
11 A Yes, sir, I do.  
12 Q And during this period of time, Mr. Powell, that  
13 you've been here, especially during the last couple of years,  
14 have you been involved in conversations, or heard rumors about  
15 any witchcraft here in Silver Valley area?  
16 A Yes, sir.  
17 Q What is that? Would you tell us about it?  
18 A More or less just rumors about devil worshipers  
19 being here or there, but I've never come across any activities  
20 or anything myself.  
21 Q Has anyone tried to say what their activities are?  
22 A No, sir.  
23 Q Do you ride a motor bike?  
24 A Yes, sir, I do.  
25 Q Own one?

1           A.    I own two of them.

2           Q.    And what kind are they?

3           A.    Three-fifty Hondas.

4           Q.    And traverse the bike trails here in Shoshone

5 County, do you?

6           A.    I do to a certain extent, but mostly when I go

7 motorcycle riding -- the reason I have two, we usually go

8 with my wife and she doesn't like the back roads so we usually

9 stay on the main roads.

10          Q.    Are these street bikes or dirt bikes?

11          A.    They are dirt bikes, but mostly when her and I

12 ride, which is almost all the time, we take the main roads and

13 every once in awhile a friend of mine and I use the back roads

14 and that's the reason I got the trail bikes is for the dual

15 purpose.

16          Q.    All right. Have you ever run into any of the

17 so-called "bikers" that fly colors?

18          A.    No, sir.

19          Q.    The groups or gangs?

20          A.    No, sir.

21          Q.    Have you been subject, whether it's in your

22 television set, in your reading or otherwise, to bikers' gangs?

23 Understand what they are?

24          A.    Yes.

25          Q.    Is there anything in that if it develops in this

1 case that Mr. Creech turns out to have been connected with  
2 bikers' gangs that would prejudice you in your appraisal of  
3 the facts of the case and the evidence of the case?

4 A. No, sir.

5 Q. I notice by your questionnaire, Mr. Powell, that  
6 you've never served on a jury before.

7 A. No, sir.

8 Q. And this case is probably the introduction in your  
9 life of our judicial system; is that correct?

10 A. Yes, sir.

11 Q. I also notice that you did mark down on "impairment  
12 of sight" that there was a need of glasses. Are you wearing  
13 contacts?

14 A. No, sir. I have my glasses here but I usually  
15 use them for reading.

16 Q. Just reading purposes?

17 A. Yes, sir.

18 Q. Have no difficulties in seeing anything at a  
19 distance?

20 A. No, sir.

21 Q. And you do carry them with you in the event that  
22 your duty as a juror would call upon you as a juror to read  
23 documents?

24 A. Yes, sir, I have them with me.

25 Q. Now, Mr. Powell, if the facts in this case call

1 for a decision to be made that the State has not proven its  
2 case beyond a reasonable doubt and you are called upon to  
3 vote in favor of an acquittal, would that fact embarrass you?

4 A. No, sir.

5 Q In other words, what you are telling us is that  
6 you are a free, open mind at this point and you believe  
7 yourself to be an unbiased and unprejudiced person?

8 A. Yes, sir.

9 Q Then, since you know yourself, Mr. Powell, better  
10 than anyone else here in the courtroom, is there anything in  
11 your make-up that you understand that might affect you as a  
12 person to be selected as a juror to hear this case that you  
13 haven't already told us about?

14 A. No, sir.

15 MR. ROBINSON: We pass Mr. Powell for cause,  
16 Your Honor.

17 THE COURT: Mr. Powell, you will have to step back  
18 in the jury room and wait there with the others. I will ask  
19 you not to discuss the questions here with any other jurors  
20 that come in there, or others --

21 THE WITNESS: Yes, sir.

22 THE COURT: I think this exhausts the 12 jurors. I'm  
23 going to ask the Clerk to draw nine names.

24 THE CLERK: Number 70, Arleigh V. Luoma; number 101,  
25 Richard J. Sibert; number 61, Daisy M. Kienholtz; number 30,

1 Ruby L. Fisher; number 52, Antonia H. Jaeger; number 82,  
2 Kathleen R. Osburn; number 4, Wanda L. Bennett; number 104,  
3 Arlene C. Sorenson; number 103, David L. Smith.

4 THE COURT: All right, we'll take a short recess while  
5 the Bailiffs go over and call those names and bring them back  
6 and put them into the jury room here.

7 We should have three in there now, is that right?

8 VOICE: Right.

9 THE COURT: We will be in recess.

10 (Recess taken.)

11 THE COURT: Counsel ready to proceed?

12 MR. REMAKLUS: Yes, Your Honor.

13 MR. ROBINSON: Yes, Your Honor.

14 THE COURT: All right. Bring in Arleigh Luoma.

15  
16 ARLEIGH V. LUOMA,  
17 a prospective juror herein, having been first duly sworn, took  
18 the stand and testified as follows:

19  
20 VOIR DIRE EXAMINATION

21 BY THE COURT:

22 Q Mr. Luoma, I'm going to ask you a few questions  
23 and then the attorneys will ask a few.

24 The Court Reporter has to report all the proceedings  
25 so you need to answer audibly so he can hear you.

1 I want to advise you first that while we don't  
2 know, of course, how long this trial will take exactly, but  
3 the estimate is about three weeks, that's the reasonable  
4 estimate at this time.

5 After the jury has been chosen and sworn to try  
6 the case and we actually commence the trial the jurors will be  
7 sequestered; this means you'll be housed in a motel and have to  
8 eat your meals at restaurants under supervision of the  
9 Bailiffs.

10 I'm wondering if there's anything in this  
11 arrangement that could cause a problem in your personal life,  
12 your home situation, your work, that would make it impossible  
13 for you to perform the jury service under these  
14 circumstances, or create an extreme hardship. I use the term  
15 "impossible" and "extreme" because I'm sure it will be  
16 inconvenient for everybody.

17 A. No.

18 Q. You can do that all right?

19 All right. Under our law the defendant in a  
20 criminal action is presumed to be innocent until his guilt is  
21 established beyond a reasonable doubt. This means that, as  
22 we sit here now without having any evidence presented at all  
23 at this stage of the proceeding, that Mr. Creech must be  
24 considered innocent.

25 Are you able to give Mr. Creech the benefit of

1 this presumption and consider him innocent at this stage of  
2 the proceeding?

3 A. I can try.

4 Q. Okay. Is there any reservations about that?

5 A. Like what?

6 Q. Well, I was wondering, your expression you'd try.  
7 I was wondering if you had something particularly you were  
8 concerned about?

9 A. No, just my being not perfect.

10 Q. Okay. Let me get into one area that, perhaps,  
11 might have a bearing on this.

12 Have you read or heard anything about this case  
13 in the newspapers or on radio or TV or from any other source?

14 A. I heard about the case.

15 Q. Can you tell me from how many different sources,  
16 about when this was, just roughly?

17 A. My foreman when I got this summons, he kind of  
18 told me about this case being brought from Southern Idaho up  
19 there.

20 Q. So, there was some information from your foreman?  
21 Any other information you have about the case?

22 A. Other than I heard over there about the two  
23 people, what you stated before.

24 Q. Other than what you heard in court today?

25 A. Nope.



1 Q That's it? Can you tell us what your foreman  
2 told you about the case?

3 A He just said it would probably be a long-drawn out  
4 situation since they went to all the bother to bringing all  
5 these people up here to North Idaho.

6 Q Did he --

7 A What we were fearing is a shifter to take my  
8 place, guy to take my place, and that's how we --

9 Q We're not -- I'm not being critical because you  
10 talked to him, I do need to know just what you know in your  
11 mind right now about the case, if anything.

12 A Well, he's been charged for murder, with shooting  
13 two people and --

14 Q You learned that this morning in court?

15 A Well, no, I've learned that before.

16 Q You learned that before?

17 A Yeah.

18 Q Anything else you learned before?

19 A No "prospectives" about -- no facts about it, no.

20 Q Okay.

21 A I don't know how it was done or nothing.

22 Q Your foreman didn't give you what purported to be  
23 facts that he knew, then; other than expressing an opinion  
24 about the length of the trial?

25 A Yeah, that was mainly it. We were talking about

1       how much I'd be off.

2               Q     I see. Based upon anything he told you, or that  
3       you've learned from any other source, have you formed an  
4       opinion at this time as to the guilt or innocence of the  
5       defendant?

6               A     I don't know, being brought before the court, I  
7       think --

8               Q     That causes you some questions?

9               A     Yeah.

10              Q     Let me, perhaps, give you a little additional  
11       explanation about this principle of law that says he is  
12       presumed to be innocent and what that means.

13                    Mr. Luoma, it's a principle that establishes,  
14       really, the burden of proof in a case like this and who has to  
15       bear that burden. I suppose it would be possible to have a  
16       system where you could start out with the defendant being  
17       considered guilty and make him prove his innocence, but that  
18       isn't our system. We take the exact reverse approach and we  
19       start out with the presumption that he's innocent and make the  
20       State prove he's guilty.

21                    The information that charges him with this  
22       crime is just a piece of paper the Prosecutor files to bring  
23       him into court and have him brought before the court. It has  
24       no weight or effect as evidence.

25                    Now, understanding those principles, do you feel

1 you can, then, disregard the fact that he is arrested and is  
2 here in court and actually truly consider him to be innocent  
3 until the State has come forward with their evidence and  
4 proved him guilty beyond a reasonable doubt, if they do that?

5 A. Yes, except for -- I still have it in my mind  
6 that he was brought here from another county and I just --  
7 makes me wonder, you know, the people in the other county down  
8 there that thought he was guilty, or they would have tried him  
9 down there.

10 So, honestly speaking, I probably --

11 Q. Well, I can explain to you the reason it was  
12 changed, Mr. Luoma, is that, apparently, there had been a lot  
13 more publicity down there than there has been here and the  
14 -- we just had a problem getting a jury down there that, you  
15 know, hadn't heard about the case and that really has no  
16 significance whatever; other than the fact there was a problem  
17 getting a jury seated.

18 That case never went to the point of presenting  
19 any evidence, there wasn't any evidence at all presented in  
20 court. So, it -- there has never been any evidentiary hearing  
21 on this matter at all. That case was terminated and before  
22 the jury was sworn to try the case. So, they -- the jurors  
23 didn't -- they never heard one iota of evidence in this case.

24 A. I haven't either.

25 Q. So, we still get back to that basic point; whether

1 you can start out with Mr. Creech with the completely open  
2 mind and consider him to be innocent unless and until the  
3 State proves him guilty and that has to be beyond a reasonable  
4 doubt. I will give the instructions on what that means.

5 Can you give him the benefit of that principle?

6 A. I hope I can.

7 Q I guess the only thing we can do, Mr. Luoma, is  
8 have you search your mind. You are the only one that can tell  
9 us what is in your mind and your feeling about the case and  
10 we'll just have to take your word for it. If you say you can,  
11 we accept it. If you think you can't, why, we'll accept that  
12 too.

13 A Well, I can as far as not knowing any of the  
14 facts of the case, I could.

15 Q Can you also set aside the fact, as far as  
16 constituting any proof at all in the case, that he's arrested  
17 and here in court?

18 A Well, still sticks in the back of head that he  
19 wasn't --

20 Q Well, let me ask you this: Can you entertain a  
21 serious consideration that it is possible that an innocent  
22 person might get charged sometime?

23 A Oh, yeah,

24 Q You could entertain that belief?

25 A (No audible response.)

1 MR. ROBINSON: Your Honor?

2 THE COURT: Yes.

3 MR. ROBINSON: In that line of questioning, would you  
4 inquire as to having to produce some evidence to overcome.

5 Q BY THE COURT: Mr. Luoma, it's also a principle  
6 of our law that goes hand and hand with this principle, the  
7 defendant is presumed to be innocent; if he doesn't want to,  
8 he doesn't have to produce any evidence to prove his innocence.

9 In other words, he can rest entirely on putting  
10 the State to its proof to prove him guilty beyond a reasonable  
11 doubt and if he thinks they can't, or haven't done it, he  
12 doesn't have to say anything, to produce any proof.

13 In other words, he doesn't have to come forward  
14 with any evidence at all, under our system, to establish his  
15 innocence. The complete burden is on the State to prove him  
16 guilty beyond a reasonable doubt. Can you accept those  
17 principles wholly at this time?

18 A. Got to prove it. I mean, the State has to prove  
19 it.

20 Q All right. Let me turn to another subject.  
21 Under our law, neither the jury nor the Court has any  
22 discretion of the penalty to be imposed for First Degree  
23 Murder. Idaho law makes the death penalty mandatory for  
24 First Degree Murder. In other words, the legislature has made  
25 that determination and taken it out of the hands of the jury

1 and the Judge, or Court. Knowing this to be the law, do you  
2 have any personal beliefs or feelings about the death penalty  
3 which would prevent you from fairly considering the evidence  
4 and the law bearing on the charge of First Degree Murder?

5 A. Nope.

6 Q. Understanding, Mr. Luoma, that the jury is the  
7 judge of the facts and the -- I'm the judge of the law and  
8 instruct you on the law, is there anything that -- any  
9 reservations you have about following the law as I would  
10 instruct you on it?

11 A. I don't know that much about the law, so somebody  
12 better.

13 Q. In other words, if I give you some instructions  
14 as to principles of law that you may personally disagree with  
15 and didn't feel were very good principles, would you still  
16 accept them --

17 A. Yeah.

18 Q. -- and apply them?

19 Do you know of anything that would prevent you  
20 from being a fair and impartial juror to both sides in this  
21 case that we haven't talked about here?

22 A. No.

23 THE COURT: Counsel may inquire.

24 MR. REMAKLUS: Thank you, Your Honor.

25

VOIR DIRE EXAMINATION

BY MR. REMAKLUS:

Q You've lived here in this county all of your life, Mr. Luoma?

A Yeah.

Q Do you have relatives down in Valley County?

A No.

Q We have some Luomas down there.

How long have you worked there for Bunker Hill?

A Oh, six years.

Q And you are a supervisor, I see, there?

A Yes.

Q How many men do you have working on your shift?

A Twelve.

Q And what's your educational background, Mr. Luoma?

A Two years of junior college, Coeur d'Alene.

Q Um-hmm. You went through high school right here?

A Yeah, Kellogg.

Q At Smelterville? Where did you go to high school?

A Kellogg.

Q At Kellogg. What kind of hobbies do you have?

A Hunting, fishing.

Q Um-hmm. Prospecting?

A Music.

1 Q What kind of reading do you and your wife do,  
2 Mr. Luoma? Do you take the daily paper?

3 A We take the Evening News and we take the Sunday  
4 paper every --

5 Q What kind of magazines do you folks get?

6 A We don't "prescribe" to any magazines, just -- she  
7 has a Ladies Home Journal and I buy that Shooter's Bible once  
8 in awhile, not "prescribed" to it monthly or anything.

9 Q Um-hmm. You pick it up in the newsstand  
10 occasionally, is that it?

11 A (No audible response.)

12 Q Have you ever -- you've never been a juror before,  
13 have you?

14 A Never.

15 Q One thing, before the case is submitted to you,  
16 you see the Judge will read you lengthy instructions as to  
17 what the law is and you are permitted to take those  
18 instructions with you to the jury room and I'm sure that  
19 you'll pay close attention to the instructions because this  
20 may be a complicated case and I agree with you, that the  
21 instructions, you know, you must be instructed as to what the  
22 law is.

23 Now, on the proving of a case beyond a reasonable  
24 doubt, this burden is on the State. I certainly have no  
25 quarrel with it, but to distinguish, I'm sure the Judge will



1       instruct you as to what a reasonable doubt is. I want you to  
2       listen very carefully to that because I'm sure he's going to  
3       instruct you that this is more than just a shadow of a doubt  
4       or possibility of a doubt and come up with a definition of  
5       what a reasonable doubt is. I want you to be extremely  
6       careful when you read the instructions and when the Judge  
7       reads them to you. I'm sure you will do that; won't you?

8           A.     Yeah.

9           Q.     You don't think, if you are satisfied that the  
10       case is proved beyond a reasonable doubt, would this mandatory  
11       death penalty keep you from returning a verdict of guilty if  
12       you are satisfied beyond a reasonable doubt?

13          A.     Nope.

14          MR. REMAKLUS: I'll pass the juror for cause,  
15       Your Honor.

16          MR. ROBINSON: May I proceed, Your Honor?

17          THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. ROBINSON:

Q Mr. Luoma, I will be asking you some questions and I, like the Court and Mr. Remaklus, am not asking these questions just to pry into your private life; just trying to measure so that we can provide a fair, unbiased and non-prejudiced jury for the trial of this case; you understand that?

A. Yeah.

Q All right. Mr. Luoma, in that light, have either you, any members of your family, close relatives, good friends, been convicted of any crimes?

A. Nope.

Q Have they ever been a victim of any crimes against them?

A. No.

Q So, there's been, really, no encounter in your immediate close relatives and acquaintances with law or law enforcement or the court; is that correct?

A. That's right.

Q All right. And what church affiliation do you have?

A. Lutheran.

Q Do you go regularly?

A. No.

1 Q Sporadically?

2 A I'm a very bad member.

3 Q A very bad member?

4 A Um-hmm.

5 Q You and I can both agree that you can be as close

6 to God out in the hills as you can in that structure called a

7 "Church building"?

8 A Yeah.

9 Q Now, in spite of the sporadic attendance, do you

10 believe in God?

11 A No, not in the definition of the -- I believe

12 there's something, but I don't, you know --

13 Q A Supreme Being?

14 A (No audible response.)

15 Q Do you believe in a Satan?

16 A No.

17 Q Do you profess to be an atheist?

18 A Agnostic.

19 Q Agnostic? And during the past couple of years

20 here in Shoshone County, Rathdrum and this area, have you heard

21 any rumors, had any conversations with people about some

22 witchcraft practices?

23 A I read about -- yeah, I read about that about a

24 year or so ago, two years, up at Spirit Lake or somewhere.

25 Q Would you tell us about it. What was it?

1           A.     Just some car driving down the road and somebody  
2     tried to stop them or something.

3           Q.     Have you heard of an encampment or group of people  
4     practicing witchcraft, Satanic Cults, things of this nature?

5           A.     No, just the vehicles on the road; that they was  
6     trying to stop them or something, you know, they tried to stand  
7     there and make a human wall or something, stop these cars from  
8     Rathdrum or Pierce or Spirit Lake.

9           Q.     These were humans that were standing out on the  
10    road?

11          A.     Yeah.

12          Q.     Was it just rumor or was it factually based?

13          A.     Now you've got me. I don't know. I remember when  
14    I read it or heard it --

15          Q.     Well, it hasn't preoccupied conversations that  
16    you've had socially; has it?

17          A.     No, but I've -- I remember it, you know, something,  
18    I can't remember hearing about it.

19          Q.     Now, you answered the questions propounded, or  
20    asked you by the Court about this case and whether or not you  
21    knew anything about the facts of this case and I think you told  
22    us a great deal of the facts that you don't know about the case.  
23    But, are there any other conversations that you can remember  
24    where this case has come up and someone has discussed it in  
25    your presence; other than today and what you advised the Court

1 about your foreman?

2 A. Just the foreman and, you know, couple people that  
3 were there, but they didn't really -- it had more to do with  
4 scheduling a man on and whoever -- and who was going to work.  
5 But, the trial was brought up; the reason why I wouldn't be  
6 at work.

7 Q All right.

8 A. Or any kind of elaboration about this murder  
9 trial from Southern Idaho.

10 Q And in that light, Mr. Luoma, I believe you made  
11 some comment that it bothered you that this was being  
12 transferred from another county; is that correct?

13 A. Yes.

14 Q All right. And now, were you in court when  
15 Mr. Creech was brought over to the court across the street this  
16 morning?

17 A. Yeah.

18 Q And he was escorted by police officers; is that  
19 correct?

20 A. Um-hmm.

21 Q And handcuffed to one of them?

22 A. Yeah.

23 Q All right. And, so, you know that he is in  
24 custody, he's incarcerated and will be during the course of this  
25 trial; is that correct?

1           A.     Um-hmm.

2           Q.     Does that raise in your mind any presumption that  
3 he must be guilty of these charges?

4           A.     No, if there's anything in my mind, I just kind of  
5 wondered why, you know, where he didn't get tried down there.  
6 But, of course, the Judge answered that for me.

7           Q.     All right. And did the Judge answer that to your  
8 satisfaction and --

9           A.     He said the jury didn't have any facts down there  
10 either, just publicity, more newspaper -- more of it in the  
11 news down there.

12          Q.     All right. Then, generally, did that kind of  
13 clear your mind so that you feel that you are unbiased and  
14 unprejudiced at this particular moment?

15          A.     I think so, but I'll let you determine that.

16          Q.     Is there any need, or necessity, in your mind that  
17 we -- speaking of myself as counsel for Thomas Eugene Creech,  
18 need to come forward with any evidence at this particular  
19 point to establish not guilty -- his being not guilty?

20          A.     Well, they haven't proved anything yet.

21          Q.     Now, Mr. Luoma, it may come to pass in this case  
22 that course, crude, profane language will come forth in the  
23 testimony and if that should happen, would that have a  
24 tendency to prejudice you against the defendant?

25          A.     I work in a mine, it gets pretty course.

1 Q All right. And at the same time it may come to  
2 pass that pictures and photographs of the deceased victims in  
3 color, grotesque, will be admitted into evidence and exhibited  
4 to the jury. Will that, in itself, tend to prejudice you in  
5 this case against this defendant?

6 A I don't know, shouldn't. You don't mean like make  
7 me sick or anything?

8 Q That -- if it does, would that cause you to be  
9 prejudiced against the person that is charged in this case?

10 A Well, I've handled animals, cleaning them out, I  
11 don't think it --

12 Q And because you may be sitting in a jury comprised  
13 mostly of women, will that cause you any embarrassment and  
14 possibly prejudice since these women were subjected to the same  
15 kind of thing that you will be if you are selected?

16 A I think that would be up to the women.

17 Q All right. What is an agnostic?

18 A Oh, man started from the ocean, the water.

19 Q You mean following Darwin's theory of evolution?

20 A Right, coming from a bird and --

21 Q We progressed from amoebas, is that what you mean?

22 A An egg or something.

23 Q And that there is no divine guidance, necessarily?

24 A Well, something had to start it, but I don't --  
25 well, I can't go along with the Bible totally because I don't

1 think any ocean opened up and they run through the ocean and all  
2 that stuff.

3 Q All right. Then, other than what we have talked  
4 about, Mr. Luoma, and since you know yourself better than  
5 any one of us here, you feel that there's anything in your  
6 make-up that you think you should tell us about that, possibly,  
7 would tend to disqualify you as sitting as a juror in this  
8 case?

9 A No, unless it would be the religious thing.

10 MR. ROBINSON: Pass Mr. Luoma for cause, Your Honor.

11 THE COURT: All right. Mr. Luoma, you'll have to stay  
12 in the jury room, then, with the other jurors there. I ask you  
13 not to discuss the questioning here with the other members.

14 THE WITNESS: Thank you.

15 THE COURT: Bring in Richard Sibert.

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RICHARD J. SIBERT,  
a prospective juror herein, having been first duly sworn, took  
the stand and testified as follows:

VOIR DIRE EXAMINATION

BY THE COURT:

Q Mr. Sibert, I want to ask you a few questions  
first, then the attorneys will each want to ask you some  
questions.

Everything we say here has to be taken down by the  
Court Reporter, so we would ask you to answer audibly so he can  
hear you and not just nod your head.

A Yes, sir.

Q First, I want to go over the matter of the length  
of this trial and some of the inconvenience you'll be subjected  
to. None of us know how long the trial will actually take; our  
best estimate is about three weeks at this time.

After the jury is sworn to try this cause,  
completely chosen and sworn to try the cause and we actually  
start the trial, the jury won't be able to go home at recesses  
in the evenings and at noon. You will be housed in a motel and  
have to eat at restaurants under the supervision of the Bailiffs.

I'm wondering if there's anything in your personal  
life, your home situation or your work, that would make this  
impossible for you to do, or create an extreme hardship. I use

1 the terms "impossible" and "extreme" because I know every juror  
2 will be inconvenienced, it wouldn't be convenient for any of  
3 you. But, -- so we can't excuse everybody just because it's  
4 inconvenient, but we could if it's an extreme situation, or  
5 real emergency situation.

6 Now, is there anything in your personal situation  
7 that would prevent you from doing this?

8 A. Other than I am the road foreman for the  
9 Calder-Shoshone area, Avery, I have a crew of six men over there  
10 to maintain and watch over.

11 Q. Do you have somebody that can substitute when you  
12 are not there?

13 A. Well, my mechanic can, but, of course, he doesn't  
14 fill the job as much as I do.

15 Q. I'm sure of that. Who would be the one that would  
16 take over if you became ill or something like that? Would he  
17 be the one?

18 A. Ray Sibert, my brother, yes.

19 Q. He's the mechanic you say?

20 A. Mechanic.

21 Q. And that's the only problem that you have?

22 A. I would say yes.

23 Q. Are you involved in any big projects right now  
24 or is it mainly routine maintenance and things like that?

25 A. Be routine maintenance.

1           Q     I see. Would this concern about the operation of  
2 that crew weigh on your mind so much that it would distract you  
3 from listening to the evidence and seriously considering the  
4 case?

5           A     No, I would say not.

6           Q     I will advise you in this regard, Mr. Sibert, you  
7 wouldn't be completely isolated, you will be able to, through  
8 the Bailiffs, to make phone calls and things, to communicate  
9 about personal affairs and business affairs. You couldn't,  
10 obviously, talk about the case to anyone or get any  
11 information about the case, but, as far as some communication  
12 about your business affairs, you could do that through the  
13 Bailiffs that would be in charge of the jury when they are  
14 sequestered --

15          A     Yes, sir.

16          Q     -- as far as keeping track of things.

17                Turn to another subject, then, Mr. Sibert. Under  
18 our law a defendant is, in a criminal action, is presumed to be  
19 innocent until his guilt is established beyond a reasonable  
20 doubt and the burden is on the State to prove him guilty beyond  
21 a reasonable doubt. This means he doesn't have to come forward  
22 with any evidence to prove he's innocent because the law says  
23 he's innocent until the State proves him guilty. Do you  
24 understand that?

25          A     Yes, sir.

1 Q Is there any reason why you couldn't give this  
2 defendant the full benefit of that principle and consider him to  
3 be innocent at this time?

4 A No, sir.

5 Q Have you read or heard anything about this case in  
6 the newspapers, radio or TV or from any other source?

7 A I would say very little, if any.

8 Q Could you just give me an idea, perhaps, how many  
9 articles or how many times and how recently it's been that you  
10 heard about it?

11 A I can't say of any.

12 Q Can't remember any specific?

13 A Not offhand I don't.

14 Q Do you have any specific memory of anything you  
15 heard or read about the facts of the case?

16 A No, sir.

17 Q You just have a vague recollection that you have  
18 heard something about it?

19 A Yes, sir, I've heard something about murder.

20 Q And that's as far as it goes?

21 A Yes, sir.

22 Q You've heard nothing, then, that's caused you to  
23 form an opinion as to guilt or innocence of the defendant?

24 A No, sir.

25 Q Turning to a different subject, under our Idaho

1 law, neither the jury nor the Court has any discretion as to  
2 the penalty to be imposed for First Degree Murder. The  
3 legislature has made that decision and passed a law that makes  
4 the death penalty mandatory for First Degree Murder; that means  
5 the law doesn't give any discretion or choice of the jury or  
6 the Judge. The legislature has already made that decision; if  
7 the man's convicted of First Degree Murder, the death penalty  
8 is automatic and mandatory.

9 Now, knowing this, do you have any personal  
10 beliefs or feelings about the death penalty which would  
11 prevent you from fairly considering this evidence and the law  
12 bearing upon the charge of First Degree Murder?

13 A. No, sir.

14 Q Understanding, Mr. Sibert, the jury will be the  
15 judges of the facts and the Court gives you the law; anything  
16 you are aware of that would prevent you from following the  
17 instructions of the law that I will give you?

18 A. No, sir.

19 Q Do you know of anything, other things that I  
20 haven't asked you about, that would prevent you from being a  
21 fair and impartial juror to both sides in this case?

22 A. No.

23 THE COURT: Counsel may inquire.  
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VOIR DIRE EXAMINATION

BY MR. THOMAS:

Q Mr. Sibert, do you have any personal reservations, or philosophy, about the death penalty?

A No.

Q Are you in favor of it or are you opposed to it?

A Well, I don't know. I have to know the case.

Q Would you say that if the State puts on a sufficient amount of evidence to persuade you beyond a reasonable doubt that the defendant is guilty of murder in the first degree, could you vote for a conviction knowing that the death penalty was mandatory?

A I wouldn't like to.

Q Could you put aside that feeling and give your vote for conviction?

A I would have to vote how I saw it.

Q Now, the Court explained to you that the jury is not responsible for the penalty, you make a vote if you are on the jury as to whether the defendant is innocent or guilty of the crime charged. Do you understand that, Mr. Sibert?

A Yes.

Q Could you put aside any feeling, or any problem you might have with the penalty and restrict your decision to what the evidence showed about innocence or guilt of the crime charged?

1           A     Yes.

2           Q     Do you have any reason to feel lacking in  
3 confidence that you could do that?

4           A     No, I don't believe so, no.

5           Q     And you would be willing to do your best to make  
6 your judgment based on the evidence and not on any feeling you  
7 might have about the penalty?

8           A     Yes, sir.

9           Q     Mr. Sibert, do you subscribe to any news magazines  
10 or any other kind of magazines?

11          A     Do I subscribe to any?

12          Q     Yes.

13          A     No, I don't.

14          Q     How about newspapers?

15          A     Yes, we do take newspapers.

16          Q     What newspapers do you take?

17          A     Spokane Review, Wallace Tribune.

18          Q     Do you -- have you ever seen any recent  
19 television programs about the work of lawyers or purporting to  
20 dramatize trials or famous cases?

21          A     I don't watch too much of that, no.

22          Q     Do you ever see anything like Petrocelli or  
23 Kate McShane or programs of that kind?

24          A     I don't recall them, no. I probably have.

25          Q     If anything doesn't happen in this trial the way

1 they might happen on television, you wouldn't feel that the  
2 State has not proved its case, will you?

3 A. No.

4 Q. Do you have any relatives, family members or  
5 close friends, Mr. Sibert, who have been in legal difficulty  
6 or who have been convicted of any crimes?

7 A. No.

8 Q. The Court has mentioned to you the necessity of  
9 the State to prove its case beyond a reasonable doubt and I  
10 think the Court, when it comes time to give the jury  
11 instructions about the law, will tell you that a reasonable  
12 doubt doesn't mean just any doubt; it means a reasonable doubt  
13 not a fanciful or imaginary doubt such as anybody could  
14 conjure up about -- just about anything.

15 Do you understand the difference between a  
16 reasonable doubt and what might be a trivial doubt or an  
17 imaginary doubt?

18 A. I would think I could figure it out.

19 Q. And you wouldn't hold the State to a burden  
20 different than the reasonable doubt burden; would you?

21 A. No.

22 Q. You feel that you could judge this case  
23 impartially and listen to the evidence and keep an open mind  
24 until the end of the trial?

25 A. Yes.



1 Q Do you understand, Mr. Sibert, that the State, as  
2 well as the defendant, has the right to a fair trial and a  
3 fair litigation of the legal questions and factual questions  
4 raised?

5 A Yes.

6 Q Do you disagree with that?

7 A No.

8 Q You feel that that is the case?

9 A Right.

10 Q And would you be willing to give the State, as  
11 well as the defendant, a fair trial and keep your mind open  
12 until the evidence is in?

13 A Yes.

14 Q If we prove that -- to your satisfaction beyond a  
15 reasonable doubt, that the defendant was guilty of First Degree  
16 Murder, could you vote for that conviction?

17 A Yes.

18 MR. THOMAS: Pass the juror for cause, Your Honor.

19 MR. ROBINSON: May I proceed, Your Honor?

20 THE COURT: Yes.

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VOIR DIRE EXAMINATION

BY MR. ROBINSON:

Q Mr. Sibert, I notice on your questionnaire that you mentioned something relating to impairment of sight, have glasses? Could you carry your glasses with you?

A. Yes.

Q What are they for? Reading purposes?

A. Reading, driving.

Q Do you have any trouble seeing things at distances as far as from you to me?

A. They become a little bleary.

Q All right. And on that questionnaire you also stated something about your hearing as being poor.

A. Well, it's not 100 per cent any more, working on machinery all my life, deafness to a certain extent.

Q So, this high decibel noise and this has impaired your hearing, is that what you are saying?

A. I would say yes.

Q All right. Now, if you were to be seated along that wall over there (indicating) and clear at the back, would you have difficulty hearing a person speaking from that witness chair that you are in? If they talked in a fairly low voice.

A. Well, it would have to be fairly low. I'm hearing you all right.

1 Q You are? Okay. Now, Mr. Thomas asked a question  
2 of you about any relatives, friends, convicted of any crimes.  
3 Have any of your relatives or close friends been victims of  
4 any crimes?

5 A Not to my knowledge, no.

6 Q And what church are you affiliated with?

7 A Catholic.

8 Q And are you a regular attender, sporadic or  
9 what?

10 A Oh, occasionally.

11 Q Occasionally? Your whole family Catholic?

12 A Yes.

13 Q Do you believe in God?

14 A Yes.

15 Q Do you believe there is a Satan?

16 A Yes.

17 Q And with your 30 years residency here in this  
18 county, Mr. Sibert, I take it from your occupation you travel  
19 the county and this area quite extensively; is that correct?

20 A Well, what I do, I maintain the roads from the  
21 -- above St. Maries to Avery.

22 Q All right.

23 A And, then, I commute back and forth to Wallace  
24 off and on.

25 Q All right. And in the past year and a half, two

1 years, have you heard conversations about witchcraft being  
2 practiced here in this area?

3 A. Yes, I have.

4 Q. On how many different occasions?

5 A. Once or twice, possibly.

6 Q. What, just social conversation?

7 A. Yes.

8 Q. Would you tell us about what you heard?

9 A. Oh, somebody through up a chain down by the steel  
10 bridge and supposed to be witch people. Well, that is just  
11 talk as far as I'm concerned.

12 Q. In your estimation, this is a lot of poppycock?

13 A. Right.

14 Q. All right. And when this case is presented, if  
15 you are selected and in the company of a number of women jurors,  
16 the evidence and testimony starts bringing about some coarse,  
17 crude, profane language; would this tend to embarrass you  
18 because you feel that the women on the jury are embarrassed and,  
19 therefore, prejudice you against the defendant?

20 A. If they want equal rights, I guess they are going  
21 to have to take it.

22 Q. All right. And by the same token, if the evidence  
23 in this case presents into evidence photographs in color of  
24 a grotesque nature, will this have any effect on you as to  
25 starting to feel prejudiced against the defendant?

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A. I don't think it would, no.

Q. You'd still want, basically, to have all the facts?

A. Facts, right.

Q. Mr. Sibert, you know yourself better than any of us in here do, now, other than the questions that we have asked you, are there anything, any one thing or several things in your make-up that you feel might tend to disqualify you to sit on this jury?

A. I don't think so, no.

Q. You are a fair, unbiased and non-prejudiced man?

A. Right.

Q. And this defendant can get before you, if you are selected as one of the jurors, a fair trial?

A. Yes.

MR. ROBINSON: Pass Mr. Sibert for cause.

THE COURT: All right, Mr. Sibert, we will ask you to wait in the jury room, then, and please don't discuss the questions with the other jurors.

THE WITNESS: Thank you, sir.

THE COURT: Bring in Mrs. Kienholtz.

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DAISY M. KIENHOLTZ,  
a prospective juror herein, having been first duly sworn, took  
the stand and testified as follows:

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Is it Mrs. Kienholtz?

A. That's right.

Q. Mrs. Kienholtz, the Court Reporter has to write  
down everything you say in these proceedings so if you'd please  
answer audibly and loudly so he can hear you.

I want to ask you a few questions first and, then,  
the attorneys will ask you a few questions.

First, I want to talk to you a little bit about  
how long the trial will last and how we're going to handle the  
jury during the trial. Now, none of us know for sure how long  
it's going to last, but the best estimate we have right now  
is about three weeks.

After the jury has been completely selected and  
sworn to try the cause and the trial actually starts, the jury  
will be sequestered is what we call it; which means they'll be  
housed in a motel and have their meals in a restaurant under  
the supervision of the Bailiffs and won't be able to go home at  
recesses during the night.

Now, bearing that in mind, is there anything in your

1 personal life, your home situation or any work situation that  
2 would make this impossible for you to do, or create an extreme  
3 hardship?

4 A No, I think my menfolk are big enough to take care  
5 of themselves. My animals can get along without me for awhile.

6 MR. REMAKLUS: Your Honor, would you speak up just a  
7 little bit so I can hear you, please.

8 THE WITNESS: I think that my menfolk are big enough --  
9 or old enough and big enough that they can take care of  
10 themselves and my animals can get along without me for whatever  
11 is necessary.

12 MR. REMAKLUS: Thank you. I can hear you fine now.

13 Q BY THE COURT: Turning to another subject, then,  
14 under our system of law and justice a defendant in a criminal  
15 action is presumed to be innocent until his guilt is established  
16 beyond a reasonable doubt by the Prosecution.

17 In other words, he doesn't have to come forward  
18 and prove his innocence, the State has to prove his guilt  
19 beyond a reasonable doubt. In the course of the trial, when  
20 I give instructions, I'll give you more details, instructions,  
21 on what this means. But, what it means right now at this stage  
22 of the trial is that at this stage of the proceeding that  
23 Mr. Creech must be considered innocent, you see, no evidence  
24 has been presented to establish anything about his guilt. So,  
25 this principle of law requires the jurors to consider him to be

1 innocent at this stage of the proceeding.

2 Are you able at this time to give Mr. Creech the  
3 full benefit of this principle and consider him innocent as he  
4 sits here right now?

5 A. I believe I truthfully can.

6 Q. Have you read or heard anything about this case in  
7 the newspapers or radio or TV or from any other source?

8 A. A little, but I haven't, really, paid any attention  
9 to it.

10 Q. Can you give me just some idea about how many  
11 times and from what source you've heard about it?

12 A. Mostly in the paper and, oh, I heard a little  
13 about it I believe on the TV, but I seldom watch the news on  
14 TV, it's too late.

15 Q. What you've read in the paper, has this gone back  
16 quite some time or been recent?

17 A. Just recent.

18 Q. Just recent?

19 A. Just recent -- well, like all papers they get  
20 things mixed up, they go by public opinion, I suppose.

21 Q. What we'd like to know now is whether, if you have  
22 any memories, you sit here today, have any specific facts or  
23 circumstances which you read in the paper or heard on TV or  
24 heard from any other source if you'd tell us just what you  
25 really know about the case as you sit here right now; so far as



1 what you've heard from other sources?

2 A. Only that he is accused of these crimes and -- but,  
3 well, like you say, he's got to be proven guilty. I really  
4 can't -- didn't really pay that much attention to it so I really  
5 can't say that I can give you anything definite.

6 Q. You just don't have any definite memory of any  
7 facts that --

8 A. This is true. I don't really pay too much  
9 attention to those kinds of things.

10 Q. No purported facts or statements in any of those  
11 stories that really stands out in your mind of having impressed  
12 you in any way?

13 A. Nothing other than he supposedly has killed these  
14 two men that were found, I believe it was in November. That's  
15 really the only thing that I can definitely say.

16 Q. That's the things he's accused of right here in  
17 this case?

18 A. Yes.

19 Q. Have you heard, learned anything that's caused you  
20 to have any opinion as to his guilt or innocence at this time?

21 A. No, I really can't say that I have.

22 Q. I want to turn to another subject now. Under our  
23 Idaho law neither the jury nor the Judge has any discretion as  
24 to the penalty to be imposed for First Degree Murder and that  
25 is the charge in this case. The legislature has made the

1 determination and passed a law that says the death penalty is  
2 mandatory in those cases where it's First Degree Murder; that  
3 means neither the jury nor the Judge has, really, any decision  
4 other than to determine -- the jury has a duty of determining  
5 guilt or innocence of that charge. Penalty is fixed by the  
6 legislature.

7 Now, knowing this to be the law that has been  
8 passed by the legislature, do you have any personal beliefs or  
9 feelings about the death penalty that would prevent you from  
10 fairly considering the evidence and the law bearing upon the  
11 charge of First Degree Murder?

12 A. Well, I don't know how to answer that, really. I  
13 don't think -- I've never really given it any real consideration  
14 myself.

15 Q. Let me put it to you in a different form, then.  
16 If the State, under the evidence and under the law that the  
17 Court gives you, in your mind had proved the defendant guilty  
18 of murder in the first degree beyond a reasonable doubt, would  
19 the knowledge that if you voted for that penalty and all the  
20 jurors accepted it, you would be subjecting the automatic  
21 penalty, would this be causing you to vote against it?

22 A. No, if he's guilty, well, he should stand his  
23 penalty. I mean, I don't believe it would.

24 Q. So, you would accept that, then?

25 A. I believe so. I think so.

1 Q We've told you -- the Court will give you  
2 instructions as to the law in the case as submitted to you.  
3 Anything that would prevent you from following these  
4 instructions?

5 A I don't know of anything that would.

6 Q In other words, if you had some personal belief  
7 about the law that was different than I told you it was, would  
8 you follow my instructions as to what the law was?

9 A Well, I think I would. I think I can truthfully  
10 say yes to that.

11 Q Do you know of anything else that I haven't asked  
12 you about that would prevent you from being a fair and  
13 impartial juror to both sides in this case?

14 A No, I really don't know of anything.

15 THE COURT: Counsel may inquire.

16  
17 VOIR DIRE EXAMINATION

18 BY MR. THOMAS:

19 Q Mrs. Kienholtz, is it fair to say that you haven't,  
20 in your mind, any strong feelings one way or another about  
21 imposition of the death penalty?

22 A No, I feel that if a person is guilty, definitely  
23 guilty, that if the death penalty is the penalty, that is what  
24 it should be. If he's not guilty, well, he shouldn't have it.  
25 I mean ---

1 Q If he's not guilty, he shouldn't be convicted of  
2 anything?

3 A That's right. That's the way I feel about it.

4 Q Do you feel that you can listen to the evidence  
5 in this case with an open mind and reserve your judgment until  
6 you've heard all of it and, then, determine whether you find  
7 the defendant to have been convicted or not beyond a reasonable  
8 doubt?

9 A I think I can.

10 Q The Court has mentioned to you the reasonable  
11 doubt standard and told you that the State has to prove its  
12 case beyond a reasonable doubt. I think the Court -- if you sit  
13 on this jury, will later instruct you that a reasonable doubt  
14 doesn't mean just any old doubt, people can conjure up a doubt  
15 about almost anything if they use an imaginative enough theory.

16 Do you think you can distinguish between a  
17 reasonable doubt and an imaginary doubt?

18 A I can sure give it a good try.

19 Q Do you have any feeling in your mind at this point  
20 that you are confused about what reasonable doubt means?

21 A Well, I'm not too sure, but reasonable doubt would  
22 be one that falls within complete reason of the situation;  
23 wouldn't it?

24 Q That's what you feel?

25 A That's what I feel, yes.

1 Q Mrs. Kienholtz, this may sound like a ridiculous  
2 question, but do you watch any television programs that show  
3 courtroom dramatizations of lawyer programs?

4 A Naturally.

5 Q If things don't happen in this trial the way they  
6 happen on Petrocelli or some of the other television programs,  
7 will you feel that the State has failed to do what it's  
8 supposed to do?

9 A Aren't those pictures usually glorified, more or  
10 less, about what actually comes in life? No, I don't believe  
11 that I will feel that the State has let anybody down or  
12 anything like that.

13 Q You can understand the difference between the  
14 television dramatization ---

15 A I think I can.

16 Q --- and factual situation?

17 Do you subscribe to any magazines or read any  
18 articles about courtroom trials, legal situations?

19 A No.

20 Q Will you be able to listen in your mind to the  
21 evidence in this case and separate from your mind any  
22 considerations about what the penalty ought to be and  
23 concentrate on the question of whether the defendant is  
24 innocent or guilty of what he's charged with?

25 A I believe I can.

1           Q     The Court has, as I recall, mentioned to you the  
2     need to give the defendant a fair trial here. Do you  
3     understand that a fair trial of the issues in this case means  
4     that both the defendant and the State get a fair trial? Do  
5     you agree with that proposition?

6           A     Will you please repeat that? I'm not sure --

7           Q     Maybe I ought to rephrase the question. I  
8     realize it was, probably, a little confusing.

9                 Do you have any difficulty with the idea that  
10    a State, as well as the defendant, should get a fair trial in  
11    this case?

12          A     Well, I think they should, yes.

13          Q     Is there any reason in your mind that you have to  
14    think of that you can't judge this case impartially?

15          A     Well, I don't know of anything. I can sure do my  
16    best, that's -- I know of no reason why I couldn't.

17          Q     Do you believe that, whether any questions about  
18    it have been asked or not, you know of anything or can you think  
19    of anything that would interfere with your ability to serve  
20    fairly on this jury?

21          A     I don't know of anything.

22          Q     Mrs. Kienholtz, have you or any members of your  
23    family or close friends ever been involved in a lawsuit;  
24    whether in criminal court or civil court?

25          A     No, I don't recall any. I know there's none in my

1 family and I don't recall any friends, close friends, that  
2 have.

3 Q Are you closely acquainted with anybody who knows  
4 any of the participants in this trial?

5 A No.

6 MR. THOMAS: Pass the juror for cause, Your Honor.

7

8 VOIR DIRE EXAMINATION

9 BY MR. ROBINSON:

10 Q Mrs. Kienholtz, in your watching television did  
11 you happen to see that presentation last evening of Kathryn?

12 A No, I didn't.

13 Q A young girl revolutionary?

14 A No, I didn't.

15 Q I noticed by your questionnaire you have seven  
16 children, one of whom is at home, age 18.

17 A That's right.

18 Q Would you, chronologically, go up the list on  
19 ages, not names, just ages of your other six?

20 A Male or female? Well, do you want the sex too,  
21 as well as the --

22 Q Yes, daughter or son; whichever is next up.

23 A I have a daughter that is 25.

24 Q All right.

25 A And I have a son that is 28.

1 Q All right, and what is your oldest?  
2 A My oldest one is a daughter.  
3 Q And her age?  
4 A Thirty-eight.  
5 Q All right. And are most of your children living  
6 around in this area, Mrs. Kienholtz?  
7 A I have one in Arizona and two in Portland and the  
8 rest of them are right fairly close.  
9 Q Fairly close, between Coeur d'Alene and Mullan and  
10 this area of Silver Valley?  
11 A Rose Lake, Kingston and I have one in Hayden Lake.  
12 Q What is your church affiliation?  
13 A Well, we're Protestant.  
14 Q And does -- is there a particular denomination in  
15 the Protestant --  
16 A Well --  
17 Q Lutheran, Episcopal --  
18 A We go once in awhile, I don't go to church as  
19 often as I would like to go, but we go to the Open Bible  
20 Tabernacle.  
21 Q And do you believe in God?  
22 A Definitely.  
23 Q And do you believe there is such a thing as Satan?  
24 A If there's a God and the Bible is true, yes, and  
25 I believe it is true.



1 Q All right. And although -- I realize that an  
2 awful lot of your hours are taken up, as you say, with your  
3 menfolk on the farm and the animals, have you socialized much  
4 where you may have heard a -- had some conversations that  
5 related to some witchcraft practice here in the Silver Valley,  
6 Shoshone County area?

7 A You hear rumbles, haven't really been around too  
8 much, but I heard here and there, a word here and there. But,  
9 I don't know how true it is. You hear this happening and  
10 that happening and different things, but you don't know whether  
11 or not they are -- I don't know whether or not there's,  
12 actually, anything to it or whether it's just somebody talking.

13 Q Have you just considered them yourself as rumors?

14 A Well, more or less let it run in one ear and out  
15 the other, not paid too much attention to it. But, it's in  
16 the back of my mind, yes.

17 Q All right, Mrs. Kienholtz, the fact of  
18 Mr. Tom Creech coming to court this morning escorted by police  
19 officers indicating that he is incarcerated and in custody,  
20 does this raise any prejudice in your mind that he must be  
21 guilty of something, otherwise he wouldn't be in this condition?

22 A Well, I don't know exactly how to answer that.  
23 I would say that he is being restrained because he is under  
24 suspicion, yes. It would raise, in my mind, the thing that he  
25 must be, for some reason, they must have him in restraints.

1 But, this trial that's what it's supposed to prove whether or  
2 not he is or he isn't guilty.

3 Q All right. And the fact that we are flanked on  
4 both sides by two Deputies, does this raise some fear,  
5 presumption in your mind, that Mr. Creech is a dangerous  
6 person?

7 A I really never gave it any thought.

8 Q All right. And if it comes to pass in this case  
9 that either color, grotesque photographs are introduced into  
10 evidence, or testimony and documents relate to some crude,  
11 profanity, will this in itself tend to prejudice you against  
12 the defendant?

13 A I don't believe so.

14 Q It may be somewhat embarrassing?

15 A That's right.

16 Q But, would you make a promise you wouldn't allow  
17 that in itself to prejudice you in the case?

18 A I don't believe it would, really, prejudice me.

19 Q And, Mrs. Kienholtz, you, knowing yourself better  
20 than anyone else in this courtroom, is there anything in your  
21 make-up as you understand yourself that you would consider a  
22 disqualification of sitting as a juror in this case?

23 A No, I don't think so. I think I could fairly  
24 listen to the evidence and fairly judge. I don't know, I've  
25 just always been that way.

1 Q Do you know whether or not there is a John Birch  
2 Society here in this area?

3 A No, I don't know.

4 MR. ROBINSON: We pass Mrs. Kienholtz for cause,  
5 Your Honor.

6 THE COURT: Mrs. Kienholtz, we'll ask you to wait in  
7 the jury room, then, and ask you not to discuss the questions  
8 here with the other members of the jury.

9 Bring in Ruby Fisher.

10

11

RUBY L. FISHER,

12

a prospective juror herein, being first duly sworn, took the  
13 stand and testified as follows:

14

15

VOIR DIRE EXAMINATION

16

BY THE COURT:

17

Q Mrs. Fisher?

18

A Yes.

19

Q I want to ask you a few questions and then the  
20 attorneys will ask you a few. Everything we do here has to be  
21 reported by the Court Reporter so you will need to answer  
22 audibly to the questions and then loudly enough so he can hear  
23 you.

24

A Okay.

25

Q I want to discuss, first, just a little bit the

1 length of the trial and some procedure we're going to use with  
2 the jury, Mrs. Fisher.

3 None of us know for sure how long the trial will  
4 last at this time. However, our best estimate is about three  
5 weeks. Now, after the jury is completely selected and sworn to  
6 try the case, and the trial actually starts, we do what we call  
7 sequester the jury; this means that you will be -- the jurors  
8 would be housed in a motel and have to take their meals in  
9 restaurants under the supervision of the Bailiffs and would not  
10 be able to go home at night or during recesses.

11 I'm wondering if there's anything in your personal  
12 life, your home situation or work problems that would make  
13 this impossible for you to do or create an extreme hardship?  
14 I explain, I use the term "impossible" and "extreme" purposely  
15 because I know it's going to be inconvenient for all the jurors.  
16 But, we can't just let jurors go because it's inconvenient.  
17 But, if there really is an extreme hardship or real serious  
18 problem we'd certainly consider it.

19 Do you feel you would have a problem serving under  
20 these conditions?

21 A Well, I do. I'm just enrolled in I.C. and I've  
22 been in there like five weeks and it would -- I am -- that  
23 would be my problem as far as any hardship.

24 Q That's in a business school?

25 A Yes, it's a two-year course.

1 Q You have just started?  
2 A Yes.  
3 Q And that's -- you actually go to classes during  
4 the day, is that right?  
5 A Um-hmm.  
6 Q I take if you were absent for this long that would  
7 just eliminate, what, a semester?  
8 A I'm afraid it would, yes.  
9 THE COURT: Well, Counsel have any questions about  
10 excusing this juror?  
11 MR. REMAKLUS: No. Thank you, Your Honor.  
12 MR. ROBINSON: I don't Your Honor.  
13 THE COURT: All right, we appreciate the problem. I  
14 think that would be a rather serious thing to ask you to do.  
15 THE WITNESS: Thank you.  
16 THE COURT: So, we will excuse you from further jury  
17 service. Thank you for your appearance this morning.  
18 THE WITNESS: Thank you very much, I appreciate it.  
19 THE COURT: If you run into any of the other jury  
20 panel, I'd ask you not to discuss the questions with them. You  
21 may have a coat, you may pick it up and leave. Thank you.  
22 Bring in Antonia Jaeger.  
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ANTONIA H. JAEGER,  
a prospective juror herein, having been first duly sworn, took  
the stand and testified as follows:

VOIR DIRE EXAMINATION

BY THE COURT:

Q Is it Mrs. Jaeger? Is that the correct  
pronunciation?

A Yes, Your Honor.

Q I'm going to ask you a few questions, Mrs. Jaeger,  
and then the attorneys will ask you some questions.

The Court Reporter here has to report everything  
that we say, so if you'll please answer audibly when you are  
asked a question loudly enough for him to hear you.

A Yes, Your Honor.

Q I want to talk to you first a few minutes about  
the length of the trial and the way this jury would be  
handled and have to serve during this trial.

We don't know for sure, of course, how long the  
trial will actually last. Our best estimate right now is  
about three weeks.

Now, once we actually complete the selection of  
the jury and the jury is sworn to try the cause and the trial  
actually gets started we do what we call sequester the jury.  
Now, this means that the jury won't be able to go home at

1 night and stay in a motel and have to take their meals at  
2 restaurants under the supervision of the Bailiffs.

3 I'm wondering if there is anything in your  
4 private life, health or otherwise, or your home situation or  
5 any work problems that would make this impossible for you, or  
6 create an extreme hardship for you?

7 A. No, Your Honor, I'm all alone and I'm not working.

8 Q. So, you could handle this all right and no health  
9 problems?

10 A. I hope not.

11 Q. Okay. Fine.

12 Turn to another matter, then. Under our law a  
13 defendant in a criminal action is presumed to be innocent  
14 until his guilt is established beyond a reasonable doubt by the  
15 State. This means that the defendant doesn't have any burden  
16 of coming forward with evidence to prove his innocence; you  
17 understand, until the State has proved him guilty beyond a  
18 reasonable doubt and this principle of law means that at this  
19 stage of the proceeding the defendant, Mr. Creech, must be  
20 considered to be innocent.

21 Now, are you able to give him the benefit of  
22 this principle and consider him innocent at this stage of the  
23 proceeding?

24 A. Yes, Your Honor.

25 Q. Have you read or heard anything about this case

1 in the newspapers or on radio or TV or from any other source?  
2 A. No, I haven't read. I've been fishing all summer.  
3 Q. Been fishing all summer? And you haven't heard  
4 a thing about this case, then?  
5 A. Well, I believe it was in the paper at one time  
6 when they was first -- when they had a change of venue.  
7 Q. When they changed the place of the trial?  
8 A. Um-hmm, I believe I was --  
9 Q. Is that the only thing you've read about it?  
10 A. Yes, that's right, Your Honor.  
11 Q. Do you remember any purported facts about the  
12 case being reported in that story; other than the change of  
13 venue?  
14 A. No, I don't believe there was anything else but  
15 the change of venue. I can't remember.  
16 Q. So, as far as your memory is concerned right now,  
17 you just don't remember hearing or reading anything about the  
18 case; other than the change of venue?  
19 A. That's right, Your Honor.  
20 Q. Have you had any reason to form any opinion as to  
21 the guilt or innocence of the defendant at this time?  
22 A. No.  
23 Q. So, you are willing to give him a presumption of  
24 innocence right now?  
25 A. Yes, Your Honor.



1 Q I want to turn to another matter. Under our law  
2 neither the jury nor the Judge has any discretion as to the  
3 penalty to be imposed for First Degree Murder; which is the  
4 charge here.

5 The legislature has already fixed the penalty at  
6 a mandatory death penalty; which means the jury won't be voting  
7 on the penalty and Judge won't fix it either. The legislature  
8 has done that. But, knowing that the defendant is charged  
9 with First Degree Murder and if he is convicted of that, that  
10 it will carry an automatic death penalty, I want to ask you  
11 whether you have any personal beliefs or feelings about the  
12 death penalty that would prevent you from fairly considering  
13 the evidence and the law bearing upon the charge of First  
14 Degree Murder?

15 A I have to think about that a minute.

16 Q Go ahead and take all the time you want.

17 A I think I would.

18 Q You think you would have some problems?

19 A I think I would have problems and if I knew it  
20 was going to be a death penalty --

21 Q Well, let me just put it to you this way,  
22 Mrs. Jaeger. Would your personal feelings about the death  
23 penalty just completely prevent you from finding a defendant  
24 guilty of First Degree Murder under any state of the evidence;  
25 knowing that if you did find that, that he would have the

1 death penalty?

2 A. No, Your Honor, I don't think it would make any

3 difference if there was enough evidence.

4 Q. You feel if there was enough evidence to prove

5 guilt beyond a reasonable doubt you still could find that

6 in spite of your reservation about the death penalty?

7 A. I think, yes.

8 Q. Would you be willing to follow the instructions

9 of the Court on the law in all aspects of this case?

10 A. Yes, Your Honor, I would.

11 Q. Even though you had some personal opinions as to

12 what the law was that was different than the Court instructed

13 you, you would still follow the Court's instructions?

14 A. Yes, I would.

15 Q. Do you know of anything else, whether I've

16 asked you about it or not, that would prevent you from being

17 fair to both sides in this case?

18 A. No, I wouldn't.

19 THE COURT: Counsel may inquire.

20

21

22

23

24

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VOIR DIRE EXAMINATION

BY MR. REMAKLUS:

Q Do all of your children live here in this area, Mrs. Jaeger?

A None of them.

Q They are all gone?

A Yes, they are all married and left.

Q And I assume that you are a grandmother, or possibly a great-grandmother?

A Just a grandmother.

Q Um-hmm. I see you have five children. Are they all living?

A Yes, I had six but one died. I have five left.

Q What are the ages of your children; just the oldest and the youngest.

A The oldest is 43, she will be -- no, she was 45 and the youngest is 30.

Q Um-hmm. And are they employed? Your children, do they work?

A Oh, yes.

Q What kind of work does your --

A Well, my one son at Sandpoint, that's the oldest one, he's working at the ski lodge. He's a personnel supervisor.

Q Um-hmm.

1           A.    Then, my next oldest son, he died and the other  
2 son is -- he was in the Service and just retired from the  
3 Service, 20 years of service.  
4           Q.    Oh, I see.  
5           A.    And he's in the insurance business now. My other  
6 son, he's the youngest one, he's in Columbia, he's head of the  
7 speech therapy clinic down there. My two daughters are  
8 married, one daughter works but the other one doesn't.  
9           Q.    And you are retired now, I see, too?  
10          A.    Yes.  
11          Q.    How long have you been living alone, Mrs. Jaeger?  
12          A.    It was four years last June, since my husband  
13 died.  
14          Q.    Um-hmm. And he worked over for Bunker Hill;  
15 was that it?  
16          A.    Yes, sir.  
17          Q.    What kind of work did he do?  
18          A.    Well, he worked -- he was manual labor until the  
19 last few years and then he was a gate man.  
20          Q.    Um-hmm. Now, I notice you had some difficulty  
21 in answering the Judge's questions about capital punishment  
22 and I'm sure that we all, you know, think very hard about  
23 those things. I think what -- do you feel that you could,  
24 if the State met this high burden of proof and proved to you  
25 beyond a reasonable doubt that this defendant was guilty, are

1       you sure in your own mind that you could bring in a verdict  
2       of guilty since you know that that would carry the death  
3       penalty?

4           A.     Yes, I think I would. I'm sure I would be able  
5       to say he was guilty if the evidence was there.

6           Q.     Sometimes I think, you know, we look at our own  
7       children and we look at a young man in serious trouble and it  
8       makes a difficult question to answer.

9           MR. ROBINSON: Objection, Your Honor, as to argument  
10      at this point.

11      THE COURT: Yes, I'll sustain the objection.

12      MR. REMAKLUS: Excuse me.

13      Q.     BY MR. REMAKLUS: What -- do you watch television?

14      A.     Very little.

15      Q.     What kinds of hobbies? What do you do now that  
16      you are retired, Mrs. Jaeger?

17      A.     I go fishing in the summer and in the winter I  
18      knit and crochet and I'm not much of a person that goes out.  
19      I have never been outgoing or anything. I don't belong to any  
20      clubs or anything.

21      Q.     I was going to ask you that. So, you actually  
22      are pretty independent, then; aren't you?

23      A.     Yes, sir.

24      Q.     All right. Do you take the daily paper?

25      A.     Kellogg Evening News.

1 Q. Um-hmm. What kind of magazines do you take?  
2 Do you take some magazines?  
3 A. Reader's Digest.  
4 Q. Um-hmm. And when you are out fishing, do you go  
5 out and camp?  
6 A. Yes.  
7 Q. Go by yourself a lot?  
8 A. No, I don't go by myself. I don't drive. My  
9 brother and I go out and his wife.  
10 Q. Um-hmm.  
11 A. The three of us.  
12 Q. And is your brother retired also?  
13 A. Yes, sir.  
14 Q. Um-hmm. And what did he do?  
15 A. He worked in the mine.  
16 Q. And had any of your children, or any of these  
17 friends or your friends been unfortunate enough to become  
18 involved in a criminal action like this?  
19 A. No, not that I know of; unless the children have  
20 since they were moved away. But, I doubt it.  
21 Q. Yes. Do you -- you don't have any pets or  
22 anything at home that --  
23 A. No.  
24 MR. REMAKLUS: We will pass this juror for cause,  
25 Your Honor. Thank you.

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MR. ROBINSON: May I proceed?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. ROBINSON:

Q You were asked whether or not any of your relatives, close friends have been charged with any crimes. Have any of your relatives or close friends been a victim in any crimes against them?

A. Yes.

Q What's the nature of it and who was it in particular?

A. My youngest son was shot at one time.

Q I didn't hear.

A. My youngest son, some man, I think his name was John Rich, he took them out to the country, him and another boy, and stole the car and took their money and he shot my son.

Q How long ago was that?

A. Oh, it's been about -- well, he was about 15 and he's 34 now.

Q So, been about 18 or 19 years ago?

A. Um-hmm.

Q All right. And did that in particular, because it was your son, leave you any particular prejudice against

1 persons who are finally apprehended and brought before the  
2 court of justice?

3 A. No, I don't even think about it.

4 Q. You don't even think about it?

5 A. Not any more.

6 Q. Deep, back in the recesses of your mind, you don't  
7 really, in examination, you don't have a prejudice there  
8 against persons --

9 A. No, I don't.

10 Q. -- that are charged with crimes?

11 A. Well, no, I don't, because he wasn't even tried  
12 for it.

13 Q. I see.

14 A. So, I just don't --

15 Q. And I notice from the answers you put on your  
16 questionnaire you have never sat as a juror before?

17 A. Never have been in court before.

18 Q. This is your first encounter with our judicial  
19 system here in the United States; is that correct?

20 A. That's right.

21 Q. Now, are you affiliated with any church?

22 A. Yes.

23 Q. And which church is that?

24 A. Catholic.

25 Q. And do you go sporadically, regularly or how?



1 A Regularly.  
2 Q Regularly?  
3 A Every -- once a week.  
4 Q Once a week? And do you believe in God?  
5 A Yes, I do.  
6 Q And do you believe there is a Satan?  
7 A What?  
8 Q Satan.  
9 A Well, sometimes I don't.  
10 Q Sometimes you don't believe that there is such  
11 a thing as Satan?  
12 A That's right.  
13 Q Now, in your contact with other people in your  
14 social get-togethers and conversations that you've had, have  
15 you heard any rumors about witchcraft being practiced here in  
16 the Shoshone or Silver Valley area?  
17 A No.  
18 Q This is the first time you've heard anything of  
19 that nature?  
20 A I didn't know there was any going on.  
21 Q All right. So, you haven't heard any of these  
22 conversations?  
23 A No.  
24 Q And when you are out fishing, have you ever been  
25 harassed or come into contact with any group of persons on

1 motorcycles?

2 A. No, never.

3 Q. So, I needn't ask if they were polite or

4 impolite?

5 A. That's right.

6 Q. All right. Now, Mrs. Jaeger, in the event that

7 the evidence and testimony in this case includes some very

8 vulgar, profane terms and some photographs of the deceased

9 victims are entered into evidence; if you are selected as a

10 juror you must hear these and see them. Will this have any

11 tendency towards causing you prejudice against Mr. Creech?

12 A. I don't -- no.

13 Q. Not that in itself?

14 A. Not that in itself, no.

15 Q. And, Mrs. Jaeger, since you know yourself better

16 than anyone else in this courtroom, whether we've asked you or

17 not, is there anything in your make-up that would touch on

18 your qualifications to be selected as a juror that you haven't

19 told us about yet?

20 A. I don't know of anything.

21 Q. In your estimation, you are an unbiased,

22 unprejudiced person who could, if selected as a juror, render

23 a fair trial in this case?

24 A. I hope so.

25 Q. Do you have any doubt about that?

1           A     No, I don't have any doubt about myself, no.

2           MR. ROBINSON: Pass Mrs. Jaeger for cause, Your Honor.

3           THE COURT: We'll ask you to step back into the jury

4 room and remain there, then, and don't discuss the questions

5 with the other jurors. Don't talk about the questioning with

6 the other jurors.

7           THE WITNESS: Okay. Thank you, Your Honor.

8           THE COURT: Bring in Kathleen Orsburn.

9

10                   KATHLEEN R. ORSBURN,

11 a prospective juror herein, having been first duly sworn, took

12 the stand and testified as follows:

13

14                   VOIR DIRE EXAMINATION

15 BY THE COURT:

16           Q     Is it Orsburn?

17           A     Right.

18           Q     Mrs. Orsburn, we're going to ask you some

19 questions. I'm going to ask you a few at first and then the

20 attorneys will each ask you. Everything you say has to be

21 reported by the Court Reporter so if you will answer audibly

22 and not just nod your head and loudly enough for him to hear

23 you, please.

24           A     Okay.

25           Q     I want to just discuss with you first a little

1 about the length of the trial and how we will handle the  
2 jury during the trial of this case. Of course, none of us  
3 know exactly how long this trial will take but our best  
4 estimate is about three weeks. Now, once the jury is  
5 completely chosen and sworn to try the case and trial actually  
6 commences we will do what we call sequester the jury; which  
7 means that you'd be housed in a motel and hotel room and have  
8 your meals in restaurants under the supervision of the  
9 Bailiffs, couldn't go home at recesses or at the evening  
10 recess until the trial is over.

11 I want you to bear this in mind, if there is  
12 anything in your personal life, your home situation and work  
13 situation that would make it impossible for you to do this,  
14 or create an extreme hardship; I know it's going to be  
15 inconvenient for all the jurors so just simply inconvenience  
16 isn't enough, that's why I phrased it in the terms of  
17 "impossible" or "extreme hardship". Do you have any  
18 situation that would cause you a problem?

19 A. Well, it would be hard as far as that goes.

20 Q. Can you tell us what the problem is?

21 A. Well, I have five kids at home and I would have  
22 to make arrangements for somebody to take care of them.

23 Q. How old are they?

24 A. Fourteen down to two.

25 Q. Two to fourteen?

1 A Um-hmm.  
2 Q Who do you have taking care of them today?  
3 A Well, I've got to get me another babysitter  
4 because mine is going to be leaving for a week, so --  
5 Q Do you work?  
6 A Yeah, I work for Bunker Hill.  
7 Q So, you do have a regular babysitter on a  
8 regular basis, then?  
9 A Yeah.  
10 Q I take it you haven't had to use a babysitter  
11 overnight, though?  
12 A No.  
13 Q Twenty-four hours a day?  
14 A No. That case, they would be staying with my  
15 folks.  
16 Q Your children would be staying with your folks?  
17 A Yeah, this I'd have to make arrangements during  
18 the day.  
19 Q Your folks both work, so they couldn't take  
20 care of the children during the day?  
21 A Right.  
22 Q So, the arrangements you'd have to make is  
23 getting a babysitter during the day and, then, they'd stay  
24 with your folks during the night?  
25 A Right.

1 Q I don't have any idea what the situation is with  
2 babysitters, are they hard to get?

3 A No, it wouldn't be hard to get a babysitter. I've  
4 already asked one lady if she would babysit for me if I need  
5 her.

6 Q And she said she would?

7 A Um-hmm. Where I would have the problem itself,  
8 at where I work there's only three of us that are broken in for  
9 this job so they are going to have to bring somebody in to take  
10 my place.

11 Q Do they know that they can't fire you or cause you  
12 to lose your job because of jury service where they are going to  
13 get in trouble?

14 A No.

15 Q There's not that concern?

16 A Just waiting to see what I'm going to do so they  
17 can make some kind of arrangement.

18 Q I guess the question we're concerned about, then,  
19 would these problems you have outlined, even though it sounds  
20 like you could work them out, even though it wouldn't be really  
21 convenient for you, would they be weighing on your mind to the  
22 extent that they would distract you from listening to the  
23 evidence and concentrating on the case?

24 A No.

25 Q I would, perhaps, to relieve your mind in this

1 respect, while you wouldn't be able to talk to anybody about  
2 the case or let anybody talk to you about the case, you would,  
3 of course, be able to communicate through the Bailiffs with  
4 your home to make sure things are going all right and do  
5 checking about your family, about personal matters and things  
6 like that.

7 A. Yes

8 Q. You wouldn't be barred from that, you would have  
9 to go through the Bailiffs to still get the information.

10 A. Um-hmm.

11 Q. You would just be completely barred from  
12 discussing the case, of course, getting information about the  
13 case.

14 A. Um-hmm. The only thing I'm worrying about is  
15 the paycheck every week.

16 Q. Um-hmm.

17 A. From what I understand, I have to wait until  
18 everything is over with before I get -- for Bunker Hill to  
19 make up the difference.

20 Q. I see. Your arrangement is, they pay you the  
21 difference between what you are getting, jury fees, and what  
22 your salary could be?

23 A. Right.

24 Q. So, you don't actually end up losing money, but  
25 you don't make any, either?

1 A. No.

2 Q I see. Well, I'm sure we will run into, probably,  
3 a lot of jurors with that problem so that probably we can't  
4 actually consider that excuse.

5 Pass on to another point, then. Under our law and  
6 our system of justice a defendant in a criminal action is  
7 presumed to be innocent until his guilt is established beyond a  
8 reasonable doubt. Of course, the burden is on the State to  
9 prove them guilty beyond a reasonable doubt. He doesn't have  
10 any burden at all to establish his innocence, to prove his  
11 innocence.

12 Of course, at this stage of the proceeding there  
13 has not been any evidence at all presented so what this  
14 principle of law means, that at this stage of the proceedings  
15 he has to be considered completely innocent. Now, are you able  
16 to give him the benefit of this principle right now at this  
17 stage?

18 A. Right, I can.

19 Q Have you read or heard anything about this case  
20 in the newspaper or radio or TV or from any other source?

21 A. Only saying just what was in the paper Friday  
22 about there was going to be that hotel up here that's --

23 Q You did read a story Friday?

24 A. Yeah.

25 Q Was that in the local paper?



1 A. Yeah, it was in the Kellogg paper.

2 Q Do you remember reading any other articles at any  
3 other time or hearing anything on TV or radio at any other  
4 time?

5 A. No.

6 Q That's the only one you remember?

7 A. Right.

8 Q Now, can you relate to me what facts you actually  
9 remember that purported facts about the case you read in that  
10 article, if any?

11 A. Oh, just about they're reserving rooms for people  
12 from Boise, I guess.

13 Q I see. Anything at all about purported facts of  
14 the actual case itself that you remember reading there?

15 A. Well, something that he was on -- he was going to  
16 have the murder trial for him here.

17 Q Anything else you remember?

18 A. Let's see.

19 Q Just trying to see how many things actually stick  
20 out in your mind or impressed you in that story that you can  
21 remember right now as you sit here.

22 A. Well, he was transported up here to have his --  
23 they are going to have his trial up here so he would have a  
24 fair trial.

25 Q Instead of Valley County?

1                   A.     Yeah.

2                   Q.     Okay. Anything else?

3                   A.     That's about all there was.

4                   Q.     All right. Anything else whether I've asked you

5 or not that's caused you to form any opinion at this point of

6 the guilt or innocence of the defendant?

7                   A.     What was that again?

8                   Q.     Have you had any reason, apart from any of these

9 things I've asked you about, that's caused you to form an

10 opinion as to guilt or innocence of the defendant at this

11 time?

12                  A.     No.

13                  Q.     One other matter of law I need to discuss with

14 you is, under our Idaho law, neither the Judge nor the jury

15 has any discretion about the penalty in a First Degree Murder

16 case. If a defendant is convicted of First Degree Murder the

17 legislature has already provided that the penalty would be a

18 death penalty and that's automatic and mandatory.

19                         In other words, the legislature made that

20 decision and the jury isn't involved with it and neither is

21 the Judge. Now, knowing this to be the law that, if you vote

22 for guilt of First Degree Murder and that the jury convicts

23 the defendant of that, there will be an automatic death penalty.

24                         Do you have any personal beliefs or feelings about

25 the death penalty that would prevent you from fairly

1 considering the evidence and the law bearing on that charge of  
2 First Degree Murder?

3 A. I'm not against it. If they've got it coming,  
4 they've got it coming. That's it.

5 Q. So, what you are saying is, if you were convinced  
6 that the State had proved its case beyond a reasonable doubt  
7 and proved First Degree Murder, this wouldn't deter you from  
8 voting for that --

9 A. Right.

10 Q. -- verdict?

11 Under our law the jury is the judge of the facts,  
12 the Judge gives you the law in the case. Would you have any  
13 reservations about following the instructions of the Court on  
14 the law? Would you be willing to follow the law as I state it  
15 to you in the case?

16 A. I'd do my best, anyway.

17 Q. Do you know of anything that would prevent you  
18 from being fair to both sides in this case?

19 A. No.

20 THE COURT: Counsel may inquire.  
21  
22  
23  
24  
25

VOIR DIRE EXAMINATION

BY MR. REMAKLUS:

Q. I notice on your questionnaire that you are divorced. How long have you been divorced, Mrs. Orsburn?

A. Be three years in March.

Q. How do you spell your last name?

A. O-r-s-b-u-r-n.

Q. So it's "Orsburn"?

A. Yeah.

Q. My sheet is wrong. Thank you.

You are satisfied in your own mind that you could make the proper arrangements for your children if you are accepted as a juror here?

A. Yes.

Q. Did you grow up here in this area?

A. Right.

Q. Have you lived here all your life?

A. Yes, 29 years.

Q. What kind of work do you do out for Bunker Hill?

A. Well, we purify -- we recycle the water that they get, purify it where they can use it again, or for releasing into the creek.

Q. Um-hmm. So, this is a skilled position, then; isn't it?

A. Yeah.

1 Q What is your educational background, Mrs. Orsburn?  
2 How far through school did you go?  
3 A Eleven years.  
4 Q Um-hmm. Have you had any other different business  
5 college training or anything like that?  
6 A No.  
7 Q How long have you worked out there for the mine?  
8 A Well, for this certain job I'm on now, seven  
9 months.  
10 Q Had you worked there for Bunker Hill before,  
11 though?  
12 A Yeah, I've been there just about two years all  
13 together.  
14 Q Um-hmm. Do you like your work out there?  
15 A Yeah.  
16 Q Do you -- you have any hobbies, Mrs. Orsburn?  
17 What do you do for pleasure? Do you sew or read or --  
18 A I haven't much time for that.  
19 Q I didn't think so.  
20 A I do a lot of -- on my days off, in the summer, I  
21 do a lot of different things in the summer.  
22 Q Do you take the children out, I mean?  
23 A Yeah.  
24 Q Spend time outdoors?  
25 A Right.

1 Q Do you -- I guess I shouldn't ask you if you are  
2 a fisherman, but do you go fishing?  
3 A Yeah, I take them fishing.  
4 Q Um-hmm.  
5 A We spend a lot of time outdoors.  
6 Q Do you belong to any organized religion?  
7 A Well --  
8 Q Are you going to church?  
9 A I used to when I was real small.  
10 Q Do your kids go to Sunday school?  
11 A Once in awhile.  
12 Q And your folks live here too; didn't you say that  
13 that's -- or where your kids would stay at night?  
14 A Um-hmm.  
15 Q What do your parents do?  
16 A Well, my mom, she's a nurse there at County  
17 Hospital.  
18 Q Um-hmm. What does your dad do?  
19 A Well, my mom and dad is separated. My dad is in  
20 Washington, he's in real estate.  
21 Q Um-hmm. I think you said you didn't have much  
22 of an opportunity to watch television?  
23 A Right.  
24 Q So, you don't have any preconceived idea from  
25 watching Kojak or Petrocelli or any of those programs about

1       what a court trial should be like?

2               A.     I watch those shows once in awhile.

3               Q.     This may be different, you realize that?

4               A.     Yeah.

5               Q.     Have you ever -- I know you've been in court

6       because you said you were divorced, but other than that --

7               A.     That's the only time I've ever been to court.

8               Q.     So, really, was that a contested matter?

9               A.     Well, no, it was just --

10              Q.     You went --

11              A.     I just told to appear in court, or he did.

12              Q.     Um-hmm. So, actually, this would be your first

13       real experience in court, then; wouldn't it?

14              A.     Right.

15              Q.     Now, if you are selected as a juror the Judge

16       will read the instructions as to what the law is and, then,

17       you will be permitted to take those to the jury room and

18       read them and you must follow His Honor's instructions, you

19       understand that?

20              A.     Um-hmm.

21              Q.     Then you, of course, as a member of the jury,

22       would decide guilt or innocence. If the State meets this high

23       burden of proof and you are satisfied in your mind beyond a

24       reasonable doubt of the defendant's guilt, will you let the

25       death penalty stand between you and handing down a verdict that

1       you think should be handed down?

2               A.     Well, I didn't even think about it. I would just,  
3 more or less, whatever I think would be guilt or not and that  
4 was the way I told you whether I think he is or not or what  
5 happens to him after wouldn't. I wouldn't --

6               Q.     As the Judge explained, the legislature saw fit  
7 to take all that away from --

8               A.     Right.

9               Q.     -- out of his hands, or the jury's hands, you see.  
10               Can you think of any reason, whether I've asked  
11 you or not, why you couldn't be fair and impartial in this  
12 matter?

13              A.     No, I couldn't think of any reason why I  
14 couldn't be fair.

15              MR. REMAKLUS: Pass the juror for cause, Your Honor.

16              MR. ROBINSON: If I may proceed, Your Honor?

17              THE COURT: Yes.

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VOIR DIRE EXAMINATION

BY MR. ROBINSON:

Q Mrs. Orsburn, I, like the Judge and Mr. Remaklus, will pose some questions to you and it's not meant to pry into your life, it's just to allow us to get acquainted with you so that we can make a determination in performing our duties to provide a fair trial, you understand that, don't you?

A Yes.

Q I notice here on your questionnaire that you have stated an impairment of hearing?

A Yes.

Q To what extent is that; the impairment?

A I have broke one of my eardrums. It was different about four years but I have got part of my hearing back.

Q Do you hear me all right?

A Yes.

Q You are not lip reading? If you are, you are doing a very good job of lip reading. You are not lip reading; are you?

A No.

Q All right.

A If you've got a loud voice, if you have a real soft voice I can't hear.

Q And you don't appear to me to be a bashful person,

1 if this case -- and you are selected on the jury and this  
2 case goes over a long period of time, if you can't hear what  
3 a witness is saying, you wouldn't hesitate to let the Court  
4 know, would you?

5 A. Well, that I don't know.

6 Q. Well --

7 A. I suppose, if it's --

8 Q. If you can't hear the evidence you wouldn't have  
9 anything to make your decision on so you wouldn't be bashful  
10 in that regard, would you?

11 A. No.

12 Q. If you can't hear you will let the Court know  
13 immediately?

14 A. Right.

15 Q. All right. And, Mrs. Orsburn, has any member of  
16 your family, close friends, ever been convicted of any crime,  
17 charged with any crime?

18 A. My sister's boyfriend has, but not any of my  
19 relations.

20 Q. How long ago was that?

21 A. Oh, I don't know.

22 Q. What was the nature of the crime?

23 A. Well --

24 Q. Burglary, murder?

25 A. No.

1 Q Bad checks, what?

2 A I think bad checks, I really don't know. I could

3 not tell you because I don't know that much about him. I just

4 know that he has been in prison a couple times and he's been

5 in and out of jail here quite a few times.

6 Q Right here in Shoshone County?

7 A Yes.

8 Q Does that fact prejudice you against either

9 defendant or the State in this case?

10 A Against him?

11 Q Against either one of the parties in this action?

12 A No.

13 Q Doesn't have anything to do with this case, is

14 that right?

15 A Because I know him.

16 Q All right. Now, have any members of your family,

17 or relatives or close friends ever been a victim of any crimes

18 committed against them?

19 A No, not that I know of.

20 Q All right. Now, you say your church affiliation

21 has been when you were a young girl?

22 A Yes.

23 Q And what denomination was this?

24 A Baptist.

25 Q And do you believe in God?

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A. Yes.

Q Do you believe that there is the existence of Satan?

A Do I believe if there is one?

Q Yes.

A Yeah.

Q Is there a devil?

A Yeah, I think there is.

Q And in your work and your social life, have you run into any conversation and discussions regarding any witchcraft being practiced here in Silver Valley, Shoshone County, Idaho?

A No.

Q Nothing in that nature has come to your attention?

A No, it hasn't.

Q Okay. Now, Mrs. Orsburn, you work at a mine and with men and women, both, is that --

A I don't work in the mine.

Q Well --

A I work for Bunker Hill.

Q For Bunker Hill?

A Yes. I work with men and ladies, both.

Q All right. Now, if, during the course of this trial, both color photos that are grotesque in nature of the

1        deceased victims, or coarse, profane, vulgar language comes  
2        out, not only in the documents but in the testimony, will this  
3        have an embarrassing tendency to you and thereby cause some  
4        biased or prejudice against the defendant?

5            A.     No, no.

6            Q.     You are not easily upset or too sensitive, are  
7        you?

8            A.     No.

9            Q.     Now, whether I've asked you or not, I've been  
10       saying this over and over again to each person, you know  
11       yourself better than anyone else in this courtroom. Is there  
12       anything that you know of in your make-up that you feel would  
13       disqualify you to sit as a juror in this case?

14          A.     No, there isn't.

15          Q.     You feel that you are totally an unbiased,  
16       unprejudiced person that can afford and give a fair trial in  
17       this matter; is that correct?

18          A.     Yes, I think I could.

19                MR. ROBINSON: We would pass Mrs. Orsburn.

20                THE COURT: I think we will take our evening recess  
21       at this time. Why don't you just stay there, Mrs. Orsburn.

22                        Would you bring the other members of the panel  
23       that are in the jury room in here, in the jury box, all of  
24       them that are in there.

25                        (Prospective jurors entered the courtroom.)

1 THE COURT: Needless to say, we haven't completed the  
2 selection of the jury yet. We're going to take our evening  
3 recess, I just wanted to remind you of the admonition I gave  
4 earlier in the trial and ask you not to read, listen to or  
5 watch any news reports concerning this case while we're in  
6 recess tonight.

7 We're just going to have to trust you to do that,  
8 but it is important that you abide by that admonition. If you  
9 don't want to miss something, why, have your family cut out  
10 the story and save it for you. But, I really -- it's  
11 important that you not watch any news broadcasts or reports  
12 for the reasons I explained to you this morning and we do  
13 ask all of you to come back here tomorrow morning at 9:30 and  
14 report back in this jury room in here, then.

15 So, with that admonition, we'll excuse you for  
16 tonight until 9:30 tomorrow morning.

17 (Whereupon the Court adjourned to the Shoshone  
18 County Courthouse and the following proceedings occurred.)

19 THE COURT: Well, as you've probably already guessed,  
20 we didn't get our jury picked so you will have to come back  
21 tomorrow. We're taking our evening recess at this time until  
22 9:30 tomorrow morning.

23 I just wanted to call you all in here again to  
24 just remind you of what I told you this morning about reading,  
25 listening to or watching any reports concerning this case.

1 I know we have to trust you entirely to do this,  
2 but it is important because I'm sure there will be a lot on  
3 the news tonight and about this and, as I say, we have no  
4 control over what gets in those news reports and it will just  
5 be critical to a fair trial in this case and, really,  
6 contribute to an orderly collection of the jury if you will  
7 abide by the admonition.

8 If you are afraid you are going to miss something,  
9 have your family clip the piece out and save it for you until  
10 you get off the jury duty here and, then, go back and read it.

11 But, as I say, I just ask you not to watch any  
12 news reports or read anything about this until we get our  
13 jury selected. So, we appreciate your patience today and the  
14 time you've spent here and we'll be in recess until 9:30  
15 tomorrow morning if you will all report back up here to this  
16 courtroom.

17 (Whereupon evening recess was taken.)  
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